UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/101
26 February 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 19 of the provisional agenda

ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

Situation of human rights in Cambodia

Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, Mr. Thomas Hammarberg, submitted in accordance with Commission resolution 1998/60

Report of the Secretary-General

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Introduction

1. In its resolution 1998/60, the Commission on Human Rights requested the Secretary-General to report to the Commission at its fifty-fifth session on the recommendations made by the Special Representative on matters within his mandate. The present report is submitted pursuant to that request and is based on the eleventh and twelfth missions of the Special Representative undertaken in October 1998 and January 1999. Like previous reports, it includes civil, cultural, economic, political and social rights. It was finalized in mid-February 1999.

2. The Special Representative of the Secretary-General for Human Rights in Cambodia, Thomas Hammarberg, has undertaken 12 official missions to Cambodia since he assumed the functions of Special Representative in May 1996. He has reported to the Commission on Human Rights (E/CN.4/1997/85, E/CN.4/1998/95) and the General Assembly (A/51/453, annex; A/52/489, annex; A/53/400, annex).

3. Since the fifty-fourth session of the Commission on Human Rights in April 1998, the General Assembly adopted resolution 53/135 on the situation of human rights in Cambodia in which it requested the Secretary-General, through his Special Representative, to assist the Government in ensuring the protection of the human rights of all people in Cambodia. Also in resolution 53/135, the General Assembly took note with appreciation of the report of the Special Representative (A/53/400, annex) and welcomed the holding of national elections. The Assembly endorsed the comments of the Special Representative that the most serious human rights violations in Cambodia in recent history had been committed by the Khmer Rouge, and noted with concern that no Khmer Rouge leaders had been brought to account for their crimes. The Assembly further welcomed the appointment by the Secretary-General, in response to the request by the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law by the Khmer Rouge, of a group of experts to evaluate the existing evidence and to propose further measures as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability.

I. ELEVENTH AND TWELFTH MISSIONS OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA

A. Eleventh mission (23-30 October 1998)

4. The Special Representative met with His Majesty King Norodom Sihanouk; Chea Sim, President of the outgoing National Assembly and President of the Cambodian People's Party (CPP); and representatives of the Government, including Second Prime Minister Hun Sen, Co-Minister of the Interior Sar Kheng, and members of the governmental Cambodian Human Rights Committee. He also met with the Chief of General Staff of the Royal Cambodian Armed Forces, Ke Kim Yan. He held meetings with Prince Ranariddh in Bangkok and other leaders of the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) in Cambodia. He talked with representatives of non-governmental organizations, the diplomatic community, the United Nations, and the International Committee of the Red Cross (ICRC). The Special Representative participated in a regular meeting of the

United Nations heads of missions of agencies present in Cambodia, where he gave a briefing on his mission. He briefed several European ambassadors in Bangkok.

5. With regard to the question of bringing Khmer Rouge leaders to justice, the Special Representative at each meeting recalled the June 1997 letter from the co-Prime Ministers requesting assistance from the United Nations (see annex), and provided information about the Secretary-General's appointment of a group of experts and a brief introduction to the members of the group. He reported on the preparatory work which had been done by the group regarding their upcoming visit to Cambodia. The Special Representative explained that the mandate of the group was to evaluate the nature of existing evidence and to listen to the views of the Cambodian leaders and people before making recommendations to the Secretary-General. The Special Representative emphasized in particular that this effort was in response to the request of the Government and was intended to be of service to Cambodia. He pointed out that it was only a preliminary step in a process, not part of any eventual judicial proceedings.

6. The Special Representative received reconfirmation of continued support from all concerned. The King, who explained that he would be away for medical treatment during the visit of the group of experts in November 1998, requested the Special Representative to convey his views and his support. Hun Sen reiterated his intention to cooperate fully and expressed his appreciation at seeing this initiative begin to move forward after nearly 20 years. Prince Ranariddh and Chea Sim also expressed their support to the Special Representative. The governmental Cambodian Human Rights Committee was appointed the focal point to facilitate the meetings of the group with senior government officials.

7. The Special Representative met with several ambassadors, including those of China, the United States, Australia, France, Thailand and Viet Nam. With the Ambassador of Thailand he discussed arrangements for meetings of the group in Bangkok with the Ministry of Foreign Affairs, which were to take place at the end of the group's visit to Cambodia. The Ambassador pointed out that Thailand had a clear policy of cooperation in this regard.

8. The Special Representative again visited the Documentation Centre of Cambodia. He discussed with the Director of the Centre preparatory work for the visit of the group.

9. The Special Representative raised the issue of investigations in the cases reported to the Government, including the March 1997 grenade attack and the July 1997 killings. It was agreed that the Special Representative would meet with the Cambodian Human Rights Committee during his next mission to review progress on these cases. The Special Representative was requested to assist the Government through the provision of international expertise in reviewing the Cambodian system of justice and in improving criminal investigation methodology, as recommended in the April 1998 report of the two experts on criminal investigation. During the mission, the Special Representative released the seventh and last report on monitoring of election-related intimidation and violence.

10. The Special Representative was concerned about the strong sentiment of racial hatred against ethnic Vietnamese as demonstrated in the recent killings of four ethnic Vietnamese. In his meeting with opposition leaders, the Special Representative expressed his deep concern about the anti-Vietnamese remarks made during the election campaign and subsequently. The Special Representative held meetings with the Vietnamese Ambassador and the Vietnamese Association and requested the compilation of further factual information on the problems faced by ethnic Vietnamese.

B. Twelfth mission (9-21 January 1999)

11. The Special Representative met with senior representatives of the newly formed Government, including the Prime Minister, Hun Sen; the Minister of Foreign Affairs, Hor Nam Hong; the co-Ministers of Defence, Tea Banh and Prince Sirirath; the co-Ministers of the Interior, Sar Kheng and You Hockry; the Minister of Justice, Uk Vithun; the Minister for Women's and Veteran's Affairs, Mu Sochua; the Minister of Environment, Mok Mareth; the Secretary of State for Education, Pok Than; and the members of the governmental Cambodian Human Rights Committee. He also met with the President of the National Assembly, Prince Ranariddh; members of the National Assembly Commission on Human Rights and Receipt of Complaints; and the opposition leader, Sam Rainsy. He had several meetings with representatives of non-governmental organizations working on human rights. The Special Representative gave a briefing to the diplomatic corps and held a press conference with the local and international media. He had discussions with representatives of the United Nations in Cambodia, including the Secretary-General's Personal Representative, the United Nations Resident Coordinator and the staff of the Cambodia office of the High Commissioner for Human Rights (COHCHR).

12. From 10 to 14 January, the Special Representative visited the highland province of Ratanakiri where he focused on the economic, social and cultural rights of the indigenous peoples, in particular the human rights aspects of logging and land issues. He visited the provincial hospital, a primary school and several villages. He held discussions with Bou Tong, the member for Ratanakiri in the National Assembly, the Governor, Kep Chuktema, and provincial authorities from various sectors. He also met with staff of UNDP/CARERE (Cambodia Area Rehabilitation and Regeneration Project), international and local NGOs, and villagers concerned about the survival of their livelihood. The Special Representative discussed with leaders of the Indigenous Women's Network the particular difficulties faced by indigenous women in the areas of education, health and economic development. He also visited the prison and held discussions with prison, court and police officials.

13. On the question of the Khmer Rouge, the Special Representative received from the Prime Minister an aide-mémoire for the attention of the Secretary-General entitled "An analysis on seeking a formula for bringing top KR leaders to trial". The aide-mémoire was presented in the form of a collection of public opinions.

14. The Special Representative emphasized that the work of the United Nations was based on the June 1997 letter from the then

co-Prime Ministers requesting assistance in addressing the atrocities which occurred during the period 1975-1979 under Khmer Rouge rule. He stressed that the international community should be respectful towards Cambodia as it deals with this delicate and difficult question and pointed out the importance of safeguarding the integrity of the process which also would include Cambodian participation.

15. Support for the work of the group of experts was also expressed by the President of the National Assembly President Prince Ranariddh, the opposition leader Sam Rainsy, and the NGO community. The Special Representative was pleased to see broad support for justice for the Khmer Rouge leaders from the Cambodian population, expressed through the petition campaign carried out by the NGO Action Committee, which has already collected over 90,000 signatures.

16. The Special Representative raised with the authorities in Phnom Penh the issue of the arrest of the two staff of the NGO Ligue cambodgienne pour la protection et la défense des droits de l'homme (LICADHO) in Sihanoukville. He believed that the arrest of human rights workers in such circumstances, without evidence and without warrants, sent a worrisome message to the human rights community and raised doubts about the Government's commitment to human rights as contained in its platform. He stressed the need for the Government to review what had happened and to confirm to the NGO community that the Government viewed its role in society as necessary and positive.

17. The Special Representative had a discussion with members of the governmental Cambodian Human Rights Committee which was mandated to ensure that investigations were carried out into the killings reported to the Government in the August 1997 and May 1998 memoranda presented by the Special Representative. He expressed his concern about the lack of progress on the investigations to the Prime Minister and to the co-Ministers of the Interior, mentioning in particular the case of Secretary of State Ho Sok. He suggested the need for an initiative directly from the Prime Minister in order to give some strength and vigour to the investigations.

18. With regard to the functioning of the justice system, the Special Representative discussed the need for the regular convening and more effective operation of the Supreme Council of Magistracy, the need to repeal or amend article 51 of the Civil Servants Act, the difficulties and problems in the prisons, the need for police reform, and the problems faced by court officials when dealing with cases in which the military was involved. The Special Representative was encouraged to hear indications of plans and strategies to address some of these problems.

19. The Special Representative discussed the provision of external expertise on criminal investigation methodology and reform of the justice system, and stressed the need for coordination in these areas among the Cambodian Human Rights Committee, the Ministry of Justice and the Ministry of the Interior.

20. The Prime Minister referred to the communal elections planned for the end of 1999. Several issues remained under consideration including the legislation and the time-frame. In particular, the Government was debating

whether to hold elections only for a chief or for the entire council of the commune. The Special Representative would collect information regarding experiences from other countries to facilitate the discussion.

II. MAJOR ISSUES AND RECOMMENDATIONS

A. Politically related violence

21. Political tension after the 26 July elections continued in August-September and led to several instances of violence. The main opposition parties, FUNCINPEC and Sam Rainsy Party, requested a clarification of how the decision had been taken to use a certain formula for the allocation of seats in the National Assembly. They also requested a comparison between the numbers of used and unused ballots - in effect, a recount. These demands were supported by a series of street demonstrations. In late August, sit-ins outside the National Assembly and in front of the Ministry of Information were organized. In the evenings and during weekends, the sit-in outside the National Assembly attracted several thousand participants. The demonstrations were peaceful, with the exception of acts of vandalism against the Cambodian-Vietnamese Friendship monument in the park outside the National Assembly on 30 August. During the sit-in, about 10 persons, suspected of being government infiltrators, were apprehended by demonstration guards, interrogated and, in several cases, pushed around or beaten. They were soon released, however, at the instigation of COHCHR staff.

22. On the evening of 20 August, Sam Rainsy joined party activists in a night vigil in front of the office of the National Election Committee in the compound of the Ministry of the Interior to safeguard the ballot bags and support their demand for a recount. Unidentified men drove past the entrance to the Ministry, throwing a grenade and firing shots at a group of journalists and other people standing there. Instantly killed was Sieng Sean, a former government official who was working as a driver for a Japanese news agency; Sam Rainsy had been standing at the spot only moments before. The United Nations Secretary-General issued a statement the following day deploring the attack, reminding the Government of its written pledge to him on 22 October 1997 to ensure the protection of political leaders and calling for a dialogue to resolve outstanding disputes. Following the attack, Sam Rainsy and his colleagues were rounded up by Ministry of Interior officials, pushed, had shots fired over their heads and were detained for some two hours. The group was released after a team of United Nations monitors and COHCHR staff intervened.

23. At that time, rumours were circulating in Phnom Penh that Vietnamese food-sellers had poisoned wine and that people had died as a result. There were no grounds for these accusations, but they stirred strong anti-Vietnamese feelings in the capital. A contributing factor was the anti-Vietnamese rhetoric frequently used by opposition speakers in their speeches during rallies. A popular opposition radio station broadcast an obviously fabricated interview with a young Vietnamese girl who "confessed" that she had received poison from Vietnam to put into the wine. On 3-4 September several incidents of mob violence against ethnic Vietnamese occurred, leading to the lynching of three women and a man and injury to a dozen others. COHCHR documented these instances and called on the Government to clarify the cause of the alleged

deaths by poison, to investigate those murders and to punish those responsible. It also called on the opposition to refrain from anti-Vietnamese language.

24. On 7 September, three grenades were thrown into the compound of Hun Sen's Phnom Penh residence. No one was harmed. According to witnesses, the grenade thrower and his accomplice were escaping on their motorbike when they had an accident behind the Independence Monument. They fled into a side street where the grenade thrower was apprehended by either local residents or policemen in plainclothes and beaten to death with an iron club. The dead man bore documents showing that he was a police intelligence agent. No result has been reported of the official investigation into this attack and the killers of the grenade thrower were not punished.

25. Soon after the grenade attack co-Prime Minister Hun Sen held a press conference and accused Sam Rainsy of being responsible. Demonstrations were banned and security forces were to take action if demonstrators refused to disperse. Restrictions were placed on travel outside Cambodia by incumbent and newly elected National Assembly members and some other opposition figures. The travel ban remained in force until the day after the new National Assembly was sworn in. It was maintained longer against several opposition figures, such as Kem Sokha, against whom charges were filed for incitement to racial hatred. The Special Representative issued a statement in support of the right to freedom of movement. He also wrote to the Government about the case of Kem Sokha. Out of fear of being arrested, Kem Sokha went into hiding, where he stayed until mid-November when he was given guarantees that the court summons would not be used as a pretext for arrest. In mid-December, he appeared before the court and responded to questions from the investigating judge. Although the case has not been dismissed, Kem Sokha has expressed confidence about his safety.

26. Sam Rainsy sought refuge on 7 September in the Office of the Personal Representative of the Secretary-General which is located in the Cambodiana Hotel. Supporters assembled outside the hotel and police and gendarmes were ordered to disperse them. Shots were fired and at least one protestor was shot in the head and killed. Another death was reported by credible witnesses and COHCHR is still checking this information.

27. The next day the security forces were ordered to crack down on the sit-in demonstrations, which they dispersed with limited violence within two hours. From then on, demonstrators became mobile and began marching. Buddhist monks joined the demonstrations in large numbers. A counter-demonstration was organized with an estimated 10,000 supporters of the Cambodian People's Party (CPP) trucked in from outside the city. Many of them were armed with sticks, iron bars and stones. Fortunately, a confrontation did not take place.

28. The street demonstrations, which continued for about a week, were in general peaceful and the security forces acted with restraint. However, on some occasions, street battles occurred, mostly at the instigation of agents provocateurs, among whom were members of the security forces dressed in civilian clothes and armed with handguns. Protesters usually responded by throwing stones or marbles with slingshots. Security forces charged

protesters and fired warning shots. During one of these clashes on 11 September near the United States Embassy, Chun Samnang, a 28-year-old teacher, was shot dead at close range by security personnel. On the same day, COHCHR issued a statement calling for the withdrawal of the agents-provocateurs. During that week, at least 77 people were injured, 16 by gunshots. Among them, 18 monks and a nun were injured, 2 of them by gunshots, when security forces violently broke their ranks.

29. Many demonstrators, including young women and Buddhist monks, were arrested by gendarmes and policemen from the Flying Tigers unit. Most were taken in trucks to military intelligence headquarters or units before being detained in secret places of detention. Only 14 arrests were officially acknowledged by police authorities. COHCHR visited police stations and places of detention in search of these arrestees. With the exception of the police station in Tuol Kork where over 25 demonstrators were detained, the searches were unsuccessful. At the end of the week, reports began to reach the office of dead bodies of young men, women and monks floating in the rivers around the capital. Investigations into these reports by COHCHR staff confirmed that 24 dead bodies had been found. Most were young and they included women and Buddhist monks. With two exceptions, the identities of the corpses could not be established and it was therefore not possible to prove any direct link between the victims and involvement in the demonstrations or related political activities. However, it was confirmed by COHCHR staff and other eyewitnesses that many bodies bore signs of violent death: they had bullet wounds, broken limbs, marks of strangulation and other signs of torture; many of them were found with their hands tied and several had been blindfolded or gagged.

30. On 16 September, the Special Representative expressed grave concern at the disappearance of protesters arrested by security forces and at the simultaneous discovery by human rights investigators of a large number of bodies at various sites around the capital. He called on the Government to account for all arrested protesters and requested investigations into these unusual deaths. The Cambodian Committee for Human Rights responded later with a report describing six cases of deaths, which it stated were related to personal disputes. COHCHR also began to compile lists of protesters witnessed or reported to have been arrested so as to verify them case by case. It estimated that at least 50 people had been arrested during the demonstrations. As of mid-January 1999, it was continuing its efforts to trace disappearances. At least eight identified individuals remained to be accounted for. COHCHR forwarded the list of missing persons to the governmental Cambodian Human Rights Committee for investigation.

31. In mid-September, threats, including death threats, against the COHCHR staff were heard over the United Nations radio network. This was the first time that explicit threats against named Cambodian staff members, as well as the staff in general, were made. The sources identified themselves as belonging to the Ministry of the Interior and as having in their possession detailed files on the identities and activities of the staff members.

32. A government spokesman wrongly stated that COHCHR had led the demonstrations and that its radio was used to spread anti-Government messages. A United Nations vehicle was confiscated on 14 September and three staff

members of the Office of the Personal Representative of the Secretary-General detained temporarily. On the same day, one COHCHR staff member was roughly treated and verbally abused by a gendarme. An official complaint was lodged with the Ministry of Foreign Affairs about the radio threats and the treatment of the staff member.

33. When the new National Assembly was convened in Siem Reap on 24 September, a rocket attack was launched against the vehicle convoy in which co-Prime Minister Hun Sen and other elected Assembly members were being transported. Hun Sen said that the attack appeared to have been aimed at him and blamed the opposition. The police investigation has so far yielded no result.

34. The new National Assembly was sworn in and the ban on travelling by most opposition figures lifted. Prince Norodom Ranariddh and Sam Rainsy, soon followed by a large number of new opposition parliamentarians, left for Bangkok from where they reiterated that their two principal demands (relating to the election formula and the need to recount both used and unused ballots) must be met before any power-sharing could be considered. They also asked that amnesty be granted for a number of opposition figures currently in exile or who had taken up armed resistance since July 1997. Almost two months later, in November 1998, and after patient mediating efforts by His Majesty the King, a power-sharing arrangement was agreed. This paved the way for the formation of a new coalition Government composed of the CPP and FUNCINPEC, leaving the Sam Rainsy Party in opposition.

35. The political settlement between political parties, which included amnesty for the top generals who had gone into armed opposition after July 1997, also resulted in the beginning of the repatriation of an estimated 40,000 refugees who had been living in refugee camps in Thailand since August 1997. It further facilitated the surrender in December of the last groups of Khmer Rouge soldiers who had continued some armed activities in pockets along the border with Thailand. Along with an estimated 600-800 defectors and their several thousand family members, two of the three remaining senior leaders of the Khmer Rouge eventually surrendered to the Government. In December, Khieu Samphan, the nominal leader of the Khmer Rouge since 1980, and Nuon Chea, Pol Pot's deputy since the 1960s, were received by Prime Minister Hun Sen.

B. Proceedings regarding Khmer Rouge crimes

36. Important moves have been made by the Cambodian Government since the Commission on Human Rights in April 1997 raised the issue of past human rights violations. In its resolution 1997/49 the Commission strongly urged the remaining Khmer Rouge to cease fighting and reiterated its concern about serious abuses committed by remaining Khmer Rouge. The Commission, furthermore, requested the Secretary-General, through his Special Representative for Human Rights in Cambodia, in collaboration with COHCHR, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability.

37. On 21 June 1997 the First and Second Prime Ministers jointly wrote to the Secretary-General requesting the assistance of the United Nations and international community in bringing to justice those persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979. In their letter, the co-Prime Ministers stated that Cambodia did not have the resources and expertise to conduct a procedure of that scope. They stated that they were aware of similar efforts to respond to the genocide and crimes against humanity in Rwanda and the former Yugoslavia. In asking for similar assistance for Cambodia, the co-Prime Ministers stated that they believed that crimes of this magnitude were of concern to all persons in the world. They expressed the hope that the international community would assist the Cambodian people in establishing the truth about the period 1975-1979 and in bringing to justice those responsible (see annex).

38. On 12 December 1997 the General Assembly adopted resolution 52/135 in which it requested the Secretary-General to examine the request by the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law, including the possibility of appointing a group of experts to evaluate the existing evidence and propose further measures, as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability. The Commission on Human Rights reiterated this position in resolution 1998/60.

39. In August 1998 the Secretary-General appointed the group of experts on the advice of the Special Representative. Appointed were Sir Ninian Stephen, former Governor-General of Australia, Mr. Rajsoomer Lallah, former Chief Justice of Mauritius, and Professor Steven Ratner from the University of Texas, United States of America. Their mandate was to evaluate the existing evidence with a view to determining the nature of crimes committed by the Khmer Rouge leaders in the years 1975-1979; to assess, after consultation with the Governments concerned, the feasibility of bringing Khmer Rouge leaders to justice; and to explore options for bringing to justice Khmer Rouge leaders before an international or national jurisdiction. The conclusions and recommendations of the group of experts were to be presented to the Secretary-General as early as possible. They are now expected in February 1999.

40. The group met for the first time in New York in September 1998, where they met with the Secretary-General and other senior United Nations officials as well as representatives from the diplomatic community. The group went to Cambodia in November in order to consult with Cambodian officials and non-governmental representatives, including co-Prime Minister Hun Sen and FUNCINPEC leader Prince Ranariddh, and to assess the nature of existing evidence of crimes committed.

41. In its platform of 23 November 1998 the new Government stated that the hard-line leaders of the outlawed Khmer Rouge would be brought to trial.

42. The Special Representative has discussed this issue with those concerned, including His Majesty the King, senior members of the Government, political party leaders, representatives of civil society and the diplomatic community, during his regular visits to Cambodia since early 1997. The

Special Representative has consistently been assured of their support for this process by those with whom he had discussions. During his twelfth mission, the Special Representative discussed the issue with the Prime Minister, the President of the National Assembly, the co-Ministers of the Interior, the Minister of Justice and the leader of the parliamentary opposition, all of whom declared their support for the work of the group of experts.

43. In January Prime Minister Hun Sen handed the Special Representative an aide-mémoire for the Secretary-General outlining considerations for further discussion on how the legal proceedings could be organized. The document made the point that crimes had also been committed before 1975 and after 1979. Furthermore, it stressed the importance of protecting peace when establishing justice. The Special Representative promised to convey these points to the experts. He noted that the experts had been asked to base their analysis on the Government's letter of 21 June 1997 and to suggest procedures which would meet the highest legal standards and demonstrate to the Cambodian people that justice was being done.

44. At the time of writing, the recommendations of the experts had not yet been finalized. The Special Representative hopes that their report will facilitate proceedings against those responsible for the killings and other grave human rights violations committed during the Government of the Khmer Rouge and that the international community will continue to support Cambodia in this important endeavour.

C. Impunity, the police and the military

45. The phenomenon of impunity and its institutional expression have been documented in previous reports by the Special Representative. It constitutes the single most important obstacle to efforts to establish the rule of law in Cambodia. It includes the lack of response to acts of political violence but is also reflected in the almost daily reports of abuses by military and police officials against common people, including killing, rape, illegal arrest or kidnapping for extortion as well as beating and other violent acts. While the courts lack human and other resources, individuals within the security forces are armed, powerful and protected. People whose rights are violated by security personnel have no effective recourse to justice. This undermines the sense of justice and makes some people believe that the only way to defend one's interests is through violent means.

46. A particularly disturbing aspect of the impunity problem in Cambodia relates to the serious crimes with political connotation, including assassinations, which have taken place during recent years and which have not been clarified. The Special Representative has reported to the Government on the deaths or disappearances of over 130 persons since 30 March 1997 and has repeatedly requested that serious investigations be undertaken. The two experts who in April 1998 on behalf of the United Nations High Commissioner for Human Rights and the Special Representative evaluated the government investigations into the grenade attack in March 1997 and the killings in July-August 1997 concluded that inquiries, when undertaken, had lacked vigour and determination. Unfortunately, the Special Representative has to draw the same conclusion regarding the response to his additional memorandum to the

Government in May 1998 which described some 40 further cases of killing and to subsequent reports documenting further deaths in similar circumstances which occurred during the second half of 1998.

47. When the Special Representative met with the Prime Minister in January 1999, he expressed his concern that so little progress had been made on these cases. He has the distinct impression that serious investigations into the grenade attack, the killings and the other murder attempts have indeed been blocked by powerful elements within the police and the military. This in turn has caused anxiety and confusion in the more professional circles within the law enforcement structures. This is no doubt an immense problem within the Cambodian justice system and one which will not be resolved until the political leadership clearly demonstrates that no one is protected.

48. The governmental Cambodian Human Rights Committee was set up, inter alia, to pursue or initiate inquiries into such cases. It has not reported significant progress on any of the above-mentioned cases, but it did investigate some of the reports of possible human rights violations brought to it during and after the election campaign. This helped to clarify facts in some of the cases and also secured the release of a kidnap victim.

49. Another serious problem is the excessive use by policemen of lethal weapons when trying to capture suspects. Firm measures are required to put an end to the frequent killings of suspects during arrest, some of which have been outright executions. Such killings are a matter of serious concern to the Special Representative who has requested COHCHR to study this problem in cooperation with relevant police authorities. Illustrative instances of lethal abuse of power by security forces in recent months include the extrajudicial killing by police officers on 30 September of farmer Vorn Meak and of defecting FUNCINPEC soldier Pard on 6 October in Kompong Cham; the killing of Soeun Dy and Toeun Rithy, accused of murder and robbery on 14 September in Pailin; and the accidental injury by shooting of a young woman on 12 November, and of a villager on 13 November, when police opened fire carelessly on suspected robbers in two separate incidents in Battambang.

50. COHCHR has also monitored and followed up numerous cases of illegal detention such as the arrest and detention on 12 November of 16 persons in Phnom Malai accused of having been involved in a rebellion and the detention in Ta Khmau of a teenager accused without evidence of being involved in the kidnapping and killing of a 9-year-old girl, who was released after his father allegedly paid a substantial bribe to the police.

51. A matter of serious concern is the involvement of police and military personnel in criminal kidnapping for ransom. Police reports show that kidnappings occur almost every week in Phnom Penh, and are now also taking place in some of the provinces, including Kompong Cham, Siem Reap, Banteay Meanchey, Kampot and Battambang. Kidnappers normally not identified and arrested by the police who claim that victims will not cooperate out of fear of reprisals. Another type of case was reported on 26 January 1999 by a woman whose daughter was detained by a military policeman who said she would be released only if the woman paid US$ 300 to a brothel owner. With the assistance of LICADHO, COHCHR, the Department of Social Affairs and the district police, the young girl was found in the gendarmerie office in a

district of Phnom Penh. A military policeman admitted keeping the young girl because she owed his brother money. He refused to release the girl until the money was paid.

52. The Cambodian Human Rights Committee outlined in a meeting with the Special Representative in January 1999 the first steps towards a reform of the police system. This is clearly needed. The Cambodian police have to go through a process of depoliticization and, at the same time, develop genuine expertise in criminal investigation and local law enforcement. The recruitment policy should be reviewed, not least for the higher ranks, and relevant qualifications recognized and rewarded. In order to foster professionalism it is necessary to give priority to education and training. The Special Representative recommends that a Police Academy be established.

53. It would favour a depoliticized, impartial police force if its leadership would avoid making premature public statements about guilt in individual cases of crime. The Director-General of the National Police made such unfortunate pronouncements during the period of political unrest in August-September 1998, putting blame on opposition leaders.

54. The Government has already decided to trim down the overstaffed police forces and to review their structures and chains of command. At the same time, it will be necessary to take action to stamp out corruption, which requires firm disciplinary action but also better and promptly paid salaries for those in the ranks. The future code of criminal procedure should clarify the authority of the police and the principles of acceptable policing methods. More detailed instructions are needed to regulate procedures for arrest, the use of weapons, house searches, interrogations, etc. The implementation of existing rules must also be ensured, for instance, putting an end to the use of force to extract confessions and to the practice of keeping people in police custody for periods exceeding 48 hours.

55. Several of the above suggestions were discussed at a consultation on police reforms organized by the Asian Human Rights Commission in early January 1999 with the participation of Cambodian government and police representatives, in their personal capacity, as well as non-governmental organizations. The Special Representative found the report of that meeting useful as a contribution to the further preparation of police reforms. The Government has also requested further expert advice from COHCHR in this field.

56. Similar reforms are needed also within the military forces to ensure proper discipline. The Prime Minister and the co-Ministers of Defence indicated to the Special Representative in January 1999 that this was a high priority. The integration of former opposition troops, including ex-Khmer Rouge soldiers, and the demobilization of some parts of the forces would be combined with a process of de-politicization. Disciplinary action should be taken against soldiers and officers who abused civilians.

D. The functioning of the judicial system

57. Interference, intimidation and threats against the courts by the police and military is another matter of concern to the Special Representative. In October 1998 another example of this malpractice was reported. In one

province a police commissioner and some of his deputies visited the president of the court and the chief prosecutor to discuss a case in which a police officer had been charged with murder but claimed self-defence. The police did not acknowledge the power of the court to arrest and investigate a police officer, despite having obtained permission from the Ministry of the Interior. The Special Representative urges the Government to instruct the police and the military to recognize the authority of the courts and to obey court orders.

58. The lack of integrity of some of the courts also undermines justice. In November 1998, the Special Representative sent a letter to the General Prosecutor about the beating to death of a young woman by a brothel owner in Banteay Meanchey. A charge of voluntary manslaughter against the brothel owner had been dismissed by the investigating judge of the Banteay Meanchey Provincial Court, who cited "lack of evidence" as grounds for dismissal despite the testimonies of 11 eyewitnesses to the beating. Also in November, the General Prosecutor sent a letter to the Banteay Meanchey prosecutor, noting the existence of procedural errors and recommending that charges of involuntary manslaughter, battery with injury, and violation of the law against trafficking in women be filed against the brothel owner. In December 1998, a representative of the Ministry of Justice went to Poipet to investigate the case. His investigation was hindered by veiled threats and intimidation by the local authorities. That same month, the President of the Banteay Meanchey Court stated that the evidence in the case (the 11 testimonies) had been lost; he seemed reluctant to file additional cases against the brothel owner, stating that the latter was being supported by powerful people in the military.

59. Political support is required to ensure that the judiciary has effective authority to prosecute all offenders, regardless of their identity, status or rank. However, additional basic legislation is also needed, such as a penal code and a code of criminal procedure. The existing drafts of these laws require further discussion and improvement, but their finalization and adoption should be a high priority. Furthermore, there is a need for laws and structural initiatives to reform the administration of justice itself. The Minister of Justice outlined a plan for such work in January 1999, which included a rationalization of the organization and structure of the court system. He also plans to suggest an amendment to article 51 of the 1994 Law on Civil Servants.

60. Article 51 in reality institutionalizes impunity. It states that prosecution of civil servants requires the approval of the ministry where they are employed. Approvals of prosecutions under article 51 are often delayed by several months, during which time the suspect remains at large and intimidates witnesses or forces a settlement. The Special Representative welcomes the commitment of the Minister of Justice to tackling this problem.

61. The Special Representative is concerned that the Supreme Council of Magistracy, one of the institutions essential for strengthening the rule of law in Cambodia, has not been more active since it was convened on 3 December 1997. The main function of the Supreme Council is to oversee the functioning of the judicial system, including the appointment and disciplining of judges and other court personnel. There are currently two vacancies on the Council which need to be filled. The Special Representative

stresses the need for the Supreme Council of Magistracy to be convened regularly to address the problem of corrupt, incompetent and inefficient judges, prosecutors and court clerks.

62. The Special Representative notes that steps are being taken to clarify the relationship between the Ministry of Justice and the courts. The draft Statute on Magistrates, which covers the recruitment, compensation and disciplining of the judiciary, should be finalized and submitted to the National Assembly. At the time of writing, comments on the draft law had been prepared by various legal aid organizations and COHCHR.

63. In the past, Ministry of Justice circulars have not only concerned administrative matters, but have in some cases also interpreted laws. Such interpretation is beyond the scope of the executive branch. The Special Representative commends that the Minister of Justice order a review of previously issued circulars which infringe upon the independence of the judiciary.

64. The low salaries of court staff continue to be a major problem and have a direct link to the existence of corruption in the courts. The draft Statute on Magistrates proposes an increase in the salaries of judges. The Special Representative reiterates his suggestion to the Government that this law be finalized and adopted, as well as his proposal that the budget allocation for all court staff and court operations be increased.

65. Many courts are unable to bring detainees to trial within the time limits stipulated by law. Several prisoners have been detained well over a year without being brought to trial. One such case is Heng Chanthol in T3 prison in Phnom Penh who was arrested on 27 July 1997 on a charge of kidnapping for ransom. He has still not been brought to trial. The Special Representative urges the Government to examine the causes of pre-trial detention for excessive periods and the reasons why investigations cannot be conducted within the required time. In many cases, suspects have spent several months in pre-trial detention before an investigation is even undertaken. The Special Representative reminds the Government that unduly prolonged pre-trial detention violates the presumption of innocence and the right to a speedy trial.

66. The Special Representative has continued to follow cases which might constitute miscarriages of justice. He was gravely concerned at the arrest and detention in Sihanoukville of two LICADHO human rights workers, Kim Sen and Meas Minear, on 21 October. There was an obvious lack of evidence against the two accused. In addition, a number of serious procedural irregularities took place in the handling of the case. The arrests were not carried out in accordance with the law, and the lawyers of the two human rights workers were denied access to the case files for three weeks. However, despite these irregularities and the lack of evidence, the case had not been dismissed at the time of writing, but was still being investigated by the Sihanoukville Provincial Court. Temporary pre-trial release of Kim Sen and Meas Minear was granted on 20 January 1998 by the Court of Appeal.

67. There have been further developments in the case of Chao Sokhon, the FUNCINPEC deputy chief of the Sihanoukville military police sentenced

to 15 years' imprisonment in June 1997 and an additional 3 years in September of the same year for drug trafficking. The Court of Appeal overturned these sentences in December 1997, and the three sitting judges were shortly thereafter suspended by the Ministry of Justice. The General Prosecutor lodged appeals with the Supreme Court in January and February 1998. The Supreme Court did not hold the trial until 23 December 1998, as the files had been with the Ministry of Justice since December 1997. During the Supreme Court trial, the prosecutor stated that Chao Sokhon was guilty of the charges, but that the evidence against him was insufficient. Despite this lack of evidence, Chao Sokhon was not acquitted; the Supreme Court ruled that the case should be sent back to the Court of Appeal for further investigation. The three judges who had been suspended in December 1997 were reinstated on 1 January 1999.

E. Torture

68. Torture and ill-treatment of arrested persons continues to be a problem. In spite of previous efforts by the Ministries of Justice and the Interior to stem such malpractice, the Special Representative has received new evidence that it still occurs. People taken into custody by the police, gendarmerie or military are frequently beaten during interrogation for the purpose of extracting confessions to be used as evidence in court. Complaints by defendants that they have been tortured or ill-treated do not get a serious response in court proceedings. Sentences are often passed on the sole basis of a confession produced under torture while reports about torture normally are left without follow-up.

69. In mid-January 1999, the Prosecutor and the Police Commissioner of Battambang province commented on the dossier containing 32 instances of alleged torture by Svay Por district police and other provincial investigators, which had been submitted to the Government by the Special Representative in June 1997. This submission was followed up by two visits to Battambang province, where the Special Representative discussed the issue with police, court and other officials. The question of the dossier had also been raised at two meetings with the Director-General of the National Police. In his preliminary response, the Prosecutor wrote that 2 of the 32 cases in the dossier had been tried and that a third case had been dismissed. COHCHR is seeking clarifications concerning the effective outcome of the trials.

70. The police report, which describes 30 of the 32 cases, denies that torture had ever occurred in any of the cases. While welcoming the fact that investigations were conducted into these cases, the Special Representative regrets that the credible allegations of torture, several of which had been confirmed by physical evidence, were not taken more seriously. In one of these cases, which resulted in the death of the detainee, the report maintains that the victim committed suicide despite compelling evidence that he died from torture. The response from the Police Commissioner illustrates that such investigations must be conducted impartially and outside the immediate police structure. No police officer has so far been prosecuted or even administratively sanctioned for any of the acts of torture.

71. The Special Representative will continue to monitor the situation of torture in Cambodia. A comprehensive strategy is needed, one aspect of which

should be to dismiss and punish security officials who are proven guilty of having used torture. This, in turn, would require political support at the highest level to make it possible for the courts to begin to take action against the torturers.

F. Prison conditions

72. The number of prisoners increased by about 20 per cent during 1998 contributing to overcrowding in some of the prisons. There are now approximately 2,350 inmates in Cambodian prisons, with 1,597 convicted prisoners and 753 pre-trial detainees. This problem is further aggravated by the fact that convicted prisoners are not detained separately from those awaiting trial.

73. COHCHR paid visits to 15 of Cambodia's 25 prisons from September to December 1998. Special attention was given to examining the legal basis for detention, access to legal counsel, the length of pre-trial detention, as well as the physical conditions of detention. The visits were followed by meetings with relevant officials.

74. COHCHR staff have had access to all prisons administered by the Ministry of the Interior. This included a general visit to the Judicial Police prison (PJ) and the T3 prison in Phnom Penh where more than 60 inmates had been held beyond the maximum six months before trial. The interviews also indicated that many inmates had been ill-treated while in custody before their transfer to prison.

75. While access to prisons for humanitarian NGOs is usually allowed without difficulties, legal aid NGOs have sometimes been denied entry and, as a consequence, some detainees have remained without legal representation. For instance, in Prey Veng prison, 25 out of 57 accused detainees were not assisted by lawyers.

76. In some prisons, the material conditions of detention have been improved through assistance from the Australian Criminal Justice Assistance Project (financed by AusAID) and the ICRC. The ACJAP is constructing and renovating five prisons and the ICRC is renovating 17 provincial prisons, including their kitchens, toilets, cells and ceilings. Several other prisons are still in bad condition.

77. In almost all the prisons visited, the food situation continues to be of serious concern. Prisons receive a ration of only 1,000 riels (equal to about US$ 25) per prisoner per day for food, water, electricity and firewood. This is clearly insufficient. During the last quarter of 1998, COHCHR noticed that many prisoners were suffering from malnutrition-related diseases. In November 1998, a 19-year-old man arrested almost a year earlier and convicted two months later died of beriberi in Prey Sar prison in Phnom Penh.

78. The health of the inmates depends largely on their relatives' ability to deliver extra food supplies. The Cambodian human rights organization LICADHO distributed biscuits provided by the World Food Programme (WFD) and donated by CARE-Australia and the Norwegian Government to supplement the prisoners' diet. This was done on an emergency basis and cannot be sustained. The Government must take responsibility for feeding the prisoners.

79. The Ministry of Health is responsible for medical care of prisoners, including the provision of medicines. In reality, the means are scarce for such medical attention. The Australian Criminal Justice Assistance Project gives important assistance in this field as do domestic NGOs such as LICADHO. There is an urgent need for the Government to develop a clear policy on how to deal with prisoners with AIDS and other terminal illnesses. It is estimated that at least six HIV-positive prisoners died during 1998 and there are presently several persons imprisoned who are in the last stages of AIDS.

80. During his visit to the Ratanakiri prison in January 1999, the Special Representative met several under-age detainees, one of whom was only 13 years old. Children should not be detained under such conditions, even for a short time. On the other hand, transfer to the Youth Rehabilitation Centre near Phnom Penh may not be in their interest as this would reduce the possibility of visits by relatives. Also, there is no legal basis for the detention of minors in this centre. There is a need for a more radical and humane approach to the treatment of young delinquents. In this, the experiences of juvenile justice reform in other countries could be of benefit.

81. Many prisoners continue to escape from Cambodian prisons. During 1998 no fewer than 85 cases were documented by LICADHO. More than 20 prisoners made an abortive attempt to escape from Kampong Cham prison in September 1998. One prisoner was shot by a policeman and died in the provincial hospital. Other reports of prisoners shot dead trying to escape were received from Pailin and Svay Rieng. The lack of serious investigation after such events is of concern to the Special Representative.

82. Leg irons, handcuffs and other instruments of restraint have again been used in some of the prisons, for instance in Kompong Cham in September 1998 following the escape attempt and in the Sihanoukville prison more recently.

83. In some prisons, such as Takhmao prison in Kandal, the inmates are only permitted to go outside their cells for a few minutes per day. The Special Representative raised concerns with the authorities in Phnom Penh about the difficult conditions in Ratanakiri prison, where inmates are locked up for excessively long hours and the provincial prison administration lacks support.

84. Prison regulations have been developed by the Prisons Department of the Ministry of the Interior with the help of the Australian Criminal Justice Assistance Project. The regulations, which have been reviewed by COHCHR, include provisions of relevant international standards such as the Standard Minimum Rules for the Treatment of Prisoners. Prison directors are now being trained in their application.

G. Labour rights

85. The Special Representative continues to have grave concerns about poor labour conditions and violations of the Labour Code of 1997. In many cases, the factory management appears not to have any intention to respect the Labour Code. Abuses reported include: forced overtime without pay; loss of pay or employment for refusing overtime; dismissal without cause; no rest day; fines for taking a rest day; garment factory workers not receiving their stipulated monthly wage of US$ 40; and hazardous working environments.

86. In January 1999, there were strikes in a number of factories. Strikers demanded better working conditions, that wages be paid on time and that union members not be mistreated. Workers who have openly supported independent unions or workers' rights have been dismissed or transferred to a different position where the working conditions are harsher to encourage them to leave.

87. In previous reports the Special Representative has expressed concern over the fact that a number of trade unions that qualified for registration were not recognized by the Government and could not be registered. However, the new Government has now registered many of those unions, and the Special Representative welcomes the decision by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation to do so. In future, all free trade unions that qualify should be registered. The Ministry should also take steps to enforce the Labour Code in all factories, in particular in the garment industry.

88. There appears also to be a need to monitor the treatment of Cambodian workers abroad. One particular case, reported to COHCHR, concerned a Cambodian woman who had contracted to work in Malaysia. Once there, she was ill-treated by the Cambodian agency which recruited her: she was slapped, kicked, and detained for over one month in a small unventilated room, together with around 50 other women. Her mother paid the agency to secure her release. COHCHR has asked the Malaysian Embassy for assistance in this case; the Special Representative welcomes the positive response of the Malaysian Ambassador.

H. HIV/AIDS

89. HIV/AIDS is becoming a major threat to the right to life in Cambodia. Recent statistics indicate that 5,000 people have already died of AIDS, and a further 5,000 deaths are expected within the next 12 months. If the epidemic continues at its present rate, AIDS will soon become one of the leading causes of death among young people. By the year 2000, as many as 1,000 children will die each year of HIV/AIDS contracted from their parents, and 10,000 children will have become orphans.

90. It is important that the Ministry for Women's Affairs and Veterans has made the fight against the spread of HIV/AIDS in Cambodia one of its major priorities. The United Nations agencies and their NGO partners have disseminated information about the epidemic and taken practical measures to stem it. In December 1998, a briefing pack aimed at policy makers, entitled "AIDS in Cambodia: Asia's fastest-growing epidemic", was produced by the United Nations Theme Group on AIDS and widely distributed. The document recommends specific actions to be taken by government institutions, including a commitment to combating the epidemic by key ministries such as Economy and Finance, Defence and the Interior, strengthening the national AIDS programme, increasing budgetary allocations, and improving efforts in HIV/AIDS education and information.

91. It has been estimated that among the 75,000 men affected, 10,000 are soldiers and 5,000 are policemen, both groups highly mobile and with high levels of sexual activity. Research shows that more than 90 per cent of HIV

transmission occurs during sex without a condom. Prostitutes are, of course, especially at risk from unprotected sex. While condoms are reportedly available in over 90 per cent of brothels, many prostitutes are not in a position to insist on their use. An estimated 39 per cent of them are already infected with HIV, one of the highest rates in Asia. Young prostitutes are at even greater risk of infection both for biological reasons and because clients select them since they are less likely to be already infected.

92. The implications of the HIV/AIDS epidemic are serious for all women in a society where they may be forced to have sex without their consent, within or outside their homes, where their level of education is likely to mean that their access to information about HIV/AIDS and its prevention is limited, and where high levels of other untreated sexually transmitted diseases predispose them to HIV infection.

93. As well as the obvious consequences of HIV/AIDS for those affected and their families, the spread of the epidemic imposes severe strains on a health service already challenged by existing problems. The annual cost of caring for each patient with AIDS in 1999 is estimated at US$ 291, more than 10 times the current per capita expenditure for health.

94. The Special Representative is also concerned that these costs and the lack of awareness among large parts of the population result in limited care for the majority of those infected.

I. Women's rights

95. The Special Representative notes that the low level of representation of women in public life itself constitutes an obstacle to tackling social problems which have a particular bearing on women. Although 10 women were elected to the National Assembly in 1998 (out of a total of 122 members), only 9 remain after the resignation of some members to devote themselves to their government posts. Women are poorly represented in the new Government: of a total of 35 senior ministers and ministers, only 2 are women; among the 52 secretaries of State, 4 are women; and of the 124 under-secretaries of State, 4 are women. However, the Special Representative notes the appointment of a woman as Minister for Women's Affairs and Veterans, and the recent adoption of a five-year action plan by the Ministry, focusing on the key areas of formal and non-formal education, economic empowerment, reproductive health (including HIV/AIDS prevention) and legal protection.

96. The Special Representative continues to be concerned about women's health issues, particularly with regard to reproductive health. Despite the combined efforts of the Government, United Nations agencies and NGOs, maternal mortality continues at a very high level, estimated at 473 per 100,000 live births in 1995. The national target to reduce the rate to under 300 per 100,000 by the year 2000 is unlikely to be met. Although considerable efforts are being made to increase access to health services, only 32 per cent of the target population of women receive antenatal care and are fully protected against tetanus. Seventy-five per cent of births take place at home. In this context, the efforts of several agencies to upgrade the skills and knowledge of traditional birth attendants take on special relevance.

97. Women members of ethnic minorities living in remote areas confront significantly greater health risks. During the Special Representative's recent visit to Ratanakiri, a province where more than 75 per cent of the population belong to ethnic minorities, he gathered information indicating that fewer than 20 per cent of the population receive antenatal care, with only 16 per cent fully immunized against tetanus. Seventy-eight per cent of births take place at home. Of a total of 839 births recorded by the health services in Ratanakiri in 1997, 26 children were stillborn and 3 women died, rates respectively four and five times higher than the national average recorded by the Ministry of Health's Planning Department in 1997.

98. The health of the ethnic minority women is undermined by multiple factors: lack of access to health services in the sparsely populated areas where they live, cultural and language barriers to effective contact with health staff, inadequate sanitation and nutrition, and low levels of education and information. Malaria is an acute problem in the areas where the minorities reside, reaching infection rates of 40 per cent. However, the WHO-supported campaign to distribute insecticide-impregnated bednets is bringing a noticeable improvement in the minority villages which have already been reached (60 per cent so far).

99. The use of tobacco (both cigars and pipes) is widespread among both men and women, and children start to smoke at an early age. Goitre due to iodine deficiency is common and cretinism is prevalent. The Special Representative commends the efforts of the Government and its partners to ensure that most salt will be iodized by the year 2000, and urges the authorities to ensure that this salt is in fact accessible to minority communities. He welcomes the outreach activities targeting minority communities, planned for 1999, in which vitamin A supplementation for children, intestinal parasite control and iodine supplementation for pregnant women and small children will be added to an intensified programme of malaria screening, treatment and prevention.

100. The Special Representative has commented in previous reports on the low levels of educational achievement among women and the very high rate of school drop-out rate among girls. He therefore welcomes the 1998 National Action Plan on Girls' Education, which identifies priorities and strategies to address the basic education needs of girls. The overall literacy rate of 55 per cent for women compares with a rate of 79 per cent for men; the disparity is even greater among the poorest and in the remote areas. As for school attendance, some 42 per cent of women over the age of 15 have never attended school, compared with 21 per cent of men. Current school attendance rates show that, by the age of 15, enrolment of boys is 50 per cent greater than that of girls.

101. The distance from home and parents' fears for the security of their daughters are factors which discourage parents from sending their daughters to school. The lack of appropriate sanitary facilities is probably another factor preventing girls from going to school; official figures show that 72 per cent of the schools have no latrines. Girls are also asked to take care of their younger siblings while parents work. Nevertheless, those girls who are enrolled and manage to stay in school tend to show better performance than boys, with lower repetition rates and better test results.

102. In remote areas, the problem of low enrolment and retention of girls in the school system is even more marked. The absence of dormitory accommodation makes it in effect impossible for children (whether boys or girls) to attend school in the towns where most schools are located.

103. The economic participation of women is another concern of the Special Representative. Their participation in the labour force is constrained both by their generally inferior educational status and by what appears to be discrimination against them. Women with the same qualifications as men, whether in the private sector or in the public service, are routinely paid less, receive fewer benefits and do not have the same opportunities for promotion. When wage rates are compared for six major occupational groups, and controlled for differences in experience and education, women's earnings are lower by about 36 per cent than those of men.

104. The Special Representative commends the work of the Ministry of Planning, supported by UNDP, in highlighting these and other issues relating to the status of women in the 1998 Cambodia Human Development Report.

J. Children's rights

105. In Cambodia, children under 15 account for 45 per cent of the population. The resulting high dependency ratio (the ratio of the non-working population to the working population) has serious consequences for the social and economic well-being of children, especially those in large families. Recent research indicates a clear correlation between household size and poverty. While only 11 per cent of households composed of two people are poor, the rate increases steadily to reach 58 per cent of households composed of 10 people. Economic well-being is also threatened by rapid population increase, which places significant pressure on the availability of land suitable for agriculture, the mainstay of 80 per cent of the population.

106. Children's education and health status are of particular concern to the Special Representative. While the rights to education and health are protected by the Convention on the Rights of the Child, which Cambodia has ratified, many serious issues remain. Although huge efforts, well supported by the international community, have been made in recent years to establish and equip schools and train teachers, much remains to be done. About 50 per cent of the children who entered grade one in 1996/97 either dropped out of school completely or had to repeat the year. In subsequent grades, 30 to 40 per cent of the children failed to be promoted to the next grade. More than half a million children aged 6 to 11 are not in school.

107. A general lack of trained teachers has a negative effect on all levels of the education system: the best trained are to be found in the secondary system, which few children ever reach. Teachers' performance is inevitably negatively affected by the inadequacy of their salaries, which led them to take strike action at all levels of the educational system in early 1999.

108. The only language of education is Khmer, which contributes to high drop-out and repetition rates for children from minority groups. Only about 25 per cent of children entering the first grade in minority regions are promoted to the second grade, compared with a national (and already low) rate

of 50 per cent. Many minority children in fact never attend school at all, although their parents state that they wish to see their children educated. In Ratanakiri, where 75 per cent of the population consists of minority groups, only about 1 in 10 of the children completing primary school is a member of a minority. The education system in Ratanakiri is further compromised by the unavailability of trained teachers, since few well-trained people are prepared to live in such a remote area, where the opportunities for supplementing their meagre incomes are limited.

109. Given the limited access of the population in remote areas to the formal education system, the Special Representative commends the efforts of NGOs and the local authorities to promote non-formal education programmes for the minority communities, using volunteer teachers from the communities themselves and a curriculum reflecting the daily realities of their lives. He also notes the work currently in progress to transcribe those minority languages which exist only as spoken languages, and hopes that these transcriptions may help to overcome the difficulties faced by minority children in the formal Khmer-based education system.

110. Government expenditure on education has fallen during the last decade. The Special Representative calls on the Government to redouble its efforts to ensure that all Cambodian children can avail themselves of their right to basic education, and to examine the possibility of reallocating to the education sector funds previously allocated to defence in view of the significant recent decline in threats to national security. According to provisional estimates, the defence sector in 1998 consumed 52 per cent of current expenditure, while the education sector received only 12 per cent. The Special Representative notes that the 1999 budget allocations indicate an increased share for education and hopes this will indeed be disbursed. He is also of the opinion that this area should be given priority in cooperation between Cambodia and international donors.

111. The limited budget allocation for education has also been an additional handicap for children of poorer families. Although the Constitution states that education should be free for all, the costs are high. School fees, uniforms, stationery, books, transport and tutoring must all be paid for. A 1997 study showed that parents and the community bear 75 per cent of the real costs of education, with the State only contributing 13 per cent. The Special Representative welcomes the Government's commitment to increase the share of GDP allocated to education to 3 per cent by the year 2002.

112. The Special Representative has similar concerns as regards expenditures in the area of health, which remain heavily dependent on external assistance from various sources. According to UNDP figures for 1990, the least developed countries, a group which includes Cambodia, spend an average of 1.9 per cent of GDP on health. However, in 1998 the Government of Cambodia spent only 0.57 per cent of GDP on health, a reduction from the 1997 level of 0.67 per cent. The Special Representative welcomes the Government's commitment to increasing the health sector's share of GDP to 2 per cent by the year 2002. In the meantime, he urges the Government to ensure that the Ministry of Health has full and regular access to the funds allocated to it in the budget, in view of the fact that only 75 per cent of the budget allocation was made available during 1998.

113. Poverty contributes to the growing problem of children living in the street. Repressive measures are not the answer. The Special Representative has been informed about the frequent temporary detention and beating of street children by policemen. In early January COHCHR intervened with the commander of a district police station in Phnom Penh to recommend that he discipline three subordinates who had severely beaten seven boys aged 14 to 18. The boys were accused of having stolen a suitcase belonging to a policeman.

114. Children are also among the people who are illegally arrested and detained in the efforts to "clean" the streets of Phnom Penh. Hundreds of people have, without being suspected of any criminal act, been rounded up by armed law enforcement officials and detained in a holding centre under the control of the Phnom Penh municipality. In December 1998 COHCHR met with the first Deputy Governor of Phnom Penh and expressed its concerns over these illegal arrests, the absence of any legal ground for using this particular facility as a detention centre, and the living conditions in the holding centre. The first Deputy Governor assured COHCHR that the holding centre would be closed and that the practice of illegally arresting and detaining people living in the streets would cease. The holding centre was, however, still in use at the end of January.

K. Rights of ethnic minorities

115. Earlier sections of this report describe attacks against Vietnamese citizens and a general expression of anti-Vietnamese sentiment in the post-election demonstrations. The Special Representative discussed these problems and other aspects of the situation of the ethnic Vietnamese with leaders of the Vietnamese Association in October and again in January 1999. He was told that their situation had become worse during the voter registration in May 1998 when ethnic Vietnamese had been accused of illegally trying to obtain voter cards. Some of them had their identity papers confiscated by commune election committees because it was judged that they could not speak Khmer well enough.

116. Further, the Special Representative has received a report about three ethnic Vietnamese families who were stopped at the border by Cambodian authorities in October 1998 when on their way to Viet Nam. The families were told that if they went to Viet Nam, their Cambodian identification papers would be confiscated and they would not be able to return to Cambodia. One family continued on to Viet Nam and had their papers confiscated while the other two chose to remain in Cambodia. Such confiscation of national identification documents is clearly arbitrary and not supported by law.

117. The Special Representative raised these matters during his January meeting with co-Minister of the Interior Sar Kheng and suggested that the legal status of ethnic Vietnamese who had lived in Cambodia for several years be further clarified and that assistance be offered for them to obtain identity documents, when needed.

118. Ethnic Vietnamese in opposition to the Government in Hanoi have faced problems in Cambodia when they have tried to demonstrate their political opinions. The vice-president of one group, the Free Vietnamese Movement, was arrested in October 1998 together with another member. His whereabouts were

unknown at the time of writing, but it was reported that he had been warned before his arrest to stop his activities with the group. Since 1996, over 20 members of this or similar groups have been arrested and deported to Viet Nam where some of them have been imprisoned. Some of those deported had Cambodian identification documents.

119. In accordance with international law, no Cambodian citizen or non-citizen should be deported to a country where his/her life or freedom would be threatened. The right of association is a basic human right protected by Cambodian law; ethnic Vietnamese should be guaranteed the same right as others to peacefully assemble.

120. The report of Cambodia under the Convention on the Elimination of All Forms of Racial Discrimination was reviewed by the Committee on the Elimination of Racial Discrimination (CERD) in March 1998. The Committee noted Cambodia's particular difficulties and also the positive factors. However, it expressed concern about the situation of the ethnic Vietnamese and made a series of recommendations. One of them was that the Law on Nationality should be revised. The Special Representative recommends that these suggestions be studied by the Cambodian Government in consultation, if desired, with COHCHR.

L. Rights of indigenous peoples

121. In accordance with relevant international standards, indigenous peoples should enjoy the rights of access and legal title to their traditional lands; to retain use of their natural resources; to be consulted and to participate in the planning, decision-making and implementation of any development process affecting their lives and livelihood; to establish their own associations; to enjoy their own culture; to express their identity and to develop their customs and traditions; to profess and practise their own religions and to use their own languages in private and public; to have the opportunity to learn and to have instruction in their mother tongue; to have access to adequate health care and appropriate education; and to be safeguarded against discrimination and exploitation.

122. For their livelihood and subsistence the highland peoples in Cambodia depend almost entirely on their natural environment, which they use for shifting cultivation and collecting forest products. However, their customary tenure and use of these natural resources is not at present recognized in national or local land-use planning nor in corresponding land rights and ownership titles. Politically powerful persons, including military officials, are engaged in rampant land speculation and abusive exploitation of natural resources to the detriment of the interests of the highland peoples. These peoples are particularly vulnerable to such abuses due to their low literacy rates, poor command of Khmer, lack of financial means, poor knowledge of their rights and the law, and lack of access to a fair system of justice.

123. The many large logging concessions granted in Ratanakiri province in recent years must be seen also as a human rights problem. They were decided without consultation with the provincial authorities, local populations, or international and non-governmental organizations engaged in development work in the province, and without any adequate social and environmental impact

assessment studies. During his visit the Special Representative was informed by many officials, United Nations staff, development workers and local villagers of the negative impact of irresponsible logging and of abuses by concession holders and by the local authorities who are involved, including the police and the military.

124. An expert non-governmental group, Global Witness, reported in January 1999 that logging in Ratanakiri was more intense during 1998 than ever before. According to studies supported by the World Bank, all the valuable timber in Cambodia will have been cut by the year 2003, if the current harvesting practices and volumes continue. Problems already observed as a consequence of deforestation include erosion of the very fertile red volcanic soil of upland Ratanakiri, floods in 1996 and 1997, drought in 1998, loss of fish in forest streams and lowered levels of groundwater. Indeed, the effects of deforestation are being felt throughout the country with fish catches declining by about 60 per cent between 1993 and 1997. Consumption of fish accounts for about 75 per cent of the protein intake of rural Cambodians.

125. The Special Representative spoke with several highlanders who have been harassed and intimidated by military personnel when they observed illegal logging on their traditional lands. Villagers have also been used by loggers, through intimidation or bribery, to indicate the most valuable trees in their areas, which are then cut. The Special Representative was informed that leading officers of Military Region 1 have been given permits to cut and export logs, in violation of Cambodia's self-imposed logging ban of 31 December 1996. Once permits are granted they have also been used for much larger volumes than indicated.

126. The Special Representative raised the issue of logging with the Prime Minister on 21 January 1999 and was told that action was being taken to implement the ban. The Prime Minister said that military involvement in logging would end and that existing unused concessions would be reviewed. In this context, the Special Representative takes note of the Prime Minister's letter of 6 January 1999, recalling regulations already in place to control illegal logging and calling on government ministers, the military and provincial governors to ensure that these are strictly implemented. He also notes the Prime Minister's proclamation of 25 January on measures for the management of forest resources and for the stamping out of illegal logging.

127. The Special Representative welcomes the inclusion of forestry issues on the provisional agenda of the Consultative Group on Cambodia which is to meet in late February 1999. The Government should follow up and implement the key recommendations on the forestry sector that were made by World Bank-funded consultancies in 1998. Urgent steps include taking forest inventories, classifying forest lands and current land use, adopting a clear policy on minimum rules for sustainable forest management, preparing a clear and enforceable Forest Law, undertaking a thorough review of existing and new concessions, ensuring transparent land-use planning and land allocation, recognizing, supporting and protecting community forestry initiatives, taking steps to reforest degraded areas with indigenous species of trees, and establishing regulations for forest industries and the timber trade that would ensure long-term sustainable income from forest taxes and revenue-sharing.

128. In the meantime, action should also be taken to ensure that any company currently involved in logging, wood processing or timber export operations suspends its operations until it can be shown to be fully legal and in conformity with national forestry policy. In this regard, the Special Representative notes that at a conference on this subject held in February 1999 the Government resolved to review concessions and to complete the Draft Law on Forestry Management by March 1999.

129. The Special Representative also recommends to the Government to change the procedure for granting concessions, which is currently neither transparent nor in accordance with the need to promote the conservation of forests and other key natural resources. Environmental impact assessments should be completed before any concessions are granted, and there should be extensive consultation with those communities whose livelihoods may be affected.

130. Despite the Government's stated intent to crack down on illegal logging, there is a risk that it will continue as long as the perpetrators of illegal logging practices, including businessmen, members of the military and civil servants and politicians, are not brought to justice and punished. Continuous monitoring of logging operations by the Government in close cooperation with the provincial authorities, local communities and independent monitors is essential. Those engaged in monitoring should enjoy government protection. The Special Representative recommends that the neighbouring countries of Viet Nam, the Lao People's Democratic Republic and Thailand make every effort to ensure that Cambodia's logging ban is respected on their side.

131. The recommendations of the Land and Forest Resources workshop which took place in Ban Lung in November 1998 with the participation of official representatives of the five north-eastern provinces (Ratanakiri, Stung Treng, Preah Vihear, Kratie and Mondulkiri) should be seriously studied and considered by the national Government. The Special Representative welcomes the decision of the Inter-Ministerial Committee on Highland People's Development to follow up on this by sponsoring a national workshop in March 1999 on the use of land and forest resources by indigenous communities in north-eastern Cambodia. He notes with appreciation the efforts of the UNDP-supported CARERE project to promote the interests of these indigenous communities.

132. The rights of access by indigenous communities to land and the natural resources on which their livelihoods depend is under threat not only because of logging and plantations, but also from land grabbing, which takes several forms: bribes to the weakest members of a community, false promises, enticement, or simply intimidation and violence. During his visit the Special Representative met with villagers from Chet village, Sioung commune, Bokeo district. They and people from two neighbouring villages had been tricked into signing documents they could not read and which were presented to them as receipts for a gift of four tons of salt. They were later informed by the district head of police that they had signed an agreement to sell 5,000 hectares of land in exchange for the salt, and had to leave their agricultural lands, keeping only their houses and a small perimeter area. Such deceptive means were reportedly also used to "buy" agricultural land in Kok village, Kok commune, Bokeo district for much less than the real value of the land.

133. An estimated 75 per cent of the population of Ratanakiri currently consists of highland peoples. The Special Representative considers that extensive in-migration of non-highland peoples into the province would constitute a further threat to the culture and livelihood of the highland peoples, especially while issues of land ownership and allocation remained unresolved. Any plans to resettle demobilized soldiers or to install returning refugees in the province should therefore be assessed for their possible impact on the existing population.

134. In Ratanakiri province there are 2 substantial areas under national protection and 12 other protected areas, but there are no adequate means to ensure their appropriate management, monitoring and protection. Although Virachey National Park is well supported by the Ministry of Environment together with the World Wide Fund for Nature, it suffers from illegal transboundary logging and harvesting of rattan and bamboo by Vietnamese companies. This affects both the ecology of the park and the livelihood of the indigenous people living within the park. The Special Representative commends the Ministry of the Environment for protecting the continued right of some 12,000 highland people to live in the core and buffer zones of the park, where they also play a role in the management and preservation of the park. He recommends that the buffer zone of the park be added to the already formally protected core area of the park and placed under the management of the Ministry of Environment. All forms of concession and privatization should be prohibited in all areas of the park and in other protected areas.

135. Preliminary plans exist to construct major hydropower dams in the north-east of Cambodia. The news of recent feasibility studies by the Asian Development Bank and the Mekong River Commission for dams on the lower Sesan and lower Srepok rivers, which would dam those rivers at their confluence and cause flooding of river areas in Ratanakiri province, have caused concern in the province. In view of the possible impact of such projects on the indigenous communities and their natural environment, the Special Representative recommends that these plans be carefully reviewed. These and other large-scale development plans must allow for public participation in their preparation.

136. The highland cultures, languages and beliefs are in some respects clearly different from those of the lowland Khmer. This has given rise in some cases to prejudice among the majority population. The Government has an important role to play in informing the general public of the different cultures present in the country, their equal value and their importance in adding to national diversity. The Special Representative commends initiatives to codify local non-written languages and collect folk tales, music, dances and other forms of cultural expression of the highland peoples.

137. The Special Representative recommends to the Government to adopt and implement the draft national policy on highland peoples' development, submitted by the Inter-Ministerial Committee on Highland Peoples' Development to the Council of Ministers in October 1997 after a long participatory process of consultation. The draft policy provides a good framework for protecting the livelihood, identity and culture of the highland peoples.

M. Land rights

138. Land is essential for the survival of the rural poor in Cambodia, as their subsistence and livelihood are directly related to their access to and use of land. Rice farming, often supplemented only by fishing and foraging, is the only real basis for food security for many.

139. Rural Cambodians are rapidly losing their land because of the wholesale privatization of forest and wetlands that were previously common resources accessible to all. The high cost of credit, with interest rates sometimes amounting to 15-40 per cent per month, leads to indebtedness and, as a consequence, sales of land. The 1992 Land Law currently in force is a problem in itself owing to its vagueness and ambiguity. The administrative system for the registration of land lacks technical and human resources and is inefficient as a result. In land disputes poor people are disadvantaged and often victims of expropriation by force.

140. An OXFAM Land Study Project has estimated that over the last six years, no less than half of Cambodia's previously available land has become inaccessible to the rural poor and that less than 10 per cent of those occupying land have tenure, even in the weakest form. This development, along with the fact that the Cambodian population is expected to double in the next 20 years, makes it urgent that the Government develop a coherent and comprehensive national land policy. So far it is unclear how the Government intends to allocate rights and access to land and what its priorities are with regard to land use and development. Before any effective law can be drafted, the Government should establish a policy on the use, management of and right to land. To develop this policy, the Government should consult not only with all the relevant governmental branches, but also with concerned and affected groups of society.

141. The existing Land Law, written in 1992, provides an interim, partial recognition of rights to immovable property. For example, the Land Law only recognizes ownership of residential property, excluding agricultural land from private ownership. While the Law stipulates that peaceful, public and long-term possession of land in good faith could be turned into ownership, it lists additional requirements which effectively negate this recognition. Most persons possessing land in Cambodia have not so far fulfilled these requirements for various reasons - lack of information about them, inability to pay the land taxes, illiteracy problems and other difficulties with the land titling procedure. Moreover, difficulties are created by high levels of corruption and conflicts of interests with officials.

142. The Land Law also does not adequately address other issues relating to the ownership and use of property, such as mortgages and transactions secured on land, donations, contracts to sell property, methods of succession, and the land titling procedure itself. Moreover, the Land Law does not consider the differing needs and rights of indigenous peoples, many of whom express a desire for communal, rather than individual ownership rights. Neither does the Law deal with the issue of concessions, which form a major part of current land use. An additional problem is that the courts, because of the deficiencies of the Land Law, apply previous legal texts such as subdecrees from the 1980s which are not suitable today.

143. The land titling procedure is unduly burdensome and there is no cadastral register in Cambodia. The process of obtaining a title involves several administrative levels. There are currently 4 million outstanding applications for title and use of land pending with the various land title offices in Cambodia. In the past 10 years, only 10 per cent of all land title applications have been processed by these offices. In essence, the land titling procedure in Cambodia today comes down to a race: whoever records ownership first will be recognized as the legal owner of the property, regardless of whether other persons have possessed the property for a long time and therefore should be seen as the rightful owners.

144. Land disputes and evictions are common. A recent case occurred on 10 January 1999 along Route 5 in Banteay Meanchey, near the Thai border when police and soldiers forced 150 families to move out of their homes. Twenty houses were torn down at the site. The families filed a complaint with a local human rights group, claiming that they had lived on the land since 1991, had helped de-mine it, and had authorization to live there. The families also alleged that a military commander had said the land was his property

145. Another dispute caused the death of Pourng Tong, a member of the non-governmental human rights organization Association des droites de l'homme et du développement au Cambodge (ADHOC), in Kandal province on 19 December 1998. He had assisted 15 families in a land dispute with a gravel company and had helped them file a complaint in the provincial court when the company had tried to evict them. The murderer, reported to have been a bodyguard of the company, shot him in the doorway of his own home. The provincial police has started investigations but no one had been arrested at the time of writing.

146. Preliminary results of the study conducted by OXFAM indicate that in most land disputes, local authorities, including law enforcement and military authorities, are involved as parties. Provincial courts have reported that they hear as many as 30 cases of land disputes each month. A proposed draft revision of the Land Law, despite removing some of the deficiencies of the Law, does not, for instance, ensure long-time possessors of land a right to ownership. De facto possession and use for five years, maintained without violence and in good faith, publicly known and without interruption (except for fallowing) or fraud should form the only conditions for temporary possession which may lead to full ownership. It is also important for the highland peoples that communal ownership be made possible.

147. The section on concessions in the draft law is inadequate as to procedures: there is a need for transparency and to ensure that concessions are open to all sectors of society, not only to business. Proposed regulations on succession are unduly burdensome and discriminatory against surviving spouses. Also, the draft land law does not adequately protect the rights of indigenous peoples. It should be prohibited to grant any private rights, including concession rights, in national parks and similar public property.

III. IMPLEMENTATION OF RECOMMENDATIONS

148. The Special Representative has in previous reports made a series of recommendations on how the human rights situation in Cambodia might be improved. The major suggestions have been reflected in the General Assembly and Commission resolutions on Cambodia. They have concerned particular problems requiring government interventions, such as extra-judicial executions, as well as the need for legal and structural reforms to enhance the protection and promotion of human rights. The Special Representative has also raised individual cases of human rights violations.

149. Though the Government has recognized the need for major structural reforms in the field of human rights, this work has not yet come very far. Also, the investigations into recent politically related crimes have not been conducted with vigour and determination.

150. Because of this, the emphasis on human rights in the new government platform of 23 November 1998, in which the coalition stated its intention to adhere to the principle of democratic pluralism and to respect for human rights as fundamental elements for social progress, takes on particular importance. The Government stated that it would ensure and protect the freedoms of the citizen guaranteed by the Cambodian Constitution, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Conventions on the Rights of the Child. The Government said that it strongly opposed racial hatred and that the overall structure of the State-run human rights institutions would be upgraded.

151. The government platform specifically supported freedom of the press, freedom of expression and freedom of assembly. At the same time it made the point that there was a difference between freedom and anarchy. It welcomed constructive activities and criticism by the opposition. It endorsed the multiple activities of the non-governmental organizations and stated that civil society would be a key partner of the Government in the construction of Cambodia.

152. The platform furthermore stressed the importance of the rule of law as a basic principle of democracy, the sustainability of the Government and of all institutions. A forceful legal structure was urgently needed to end assaults on human dignity. All people were born equal and no one should be above the law.

153. Ministers whom the Special Representative met in January 1999 described in greater detail how the new Government would advance the rule of law and improve the protection of human rights. It was acknowledged that an intense lawmaking effort was needed. The President of the National Assembly as well as the parliamentary Commission on Human Rights and Receipt of Complaints declared that they were awaiting government proposals and the Minister of Justice had developed a plan for the drafting of priority laws; he was also planning radical reform of the judicial system.

154. The Prime Minister promised firm measures against corruption and abuse of power at all levels, including logging. The co-Ministers of the Interior

and the governmental Cambodian Human Rights Committee were considering extensive reforms of the police. The co-Ministers of Defence reacted positively to suggestions about disciplining the military forces and intensifying human rights education for them. In the social sector, the Minister for Women's Affairs and Veterans was developing a programme to combat, inter alia, trafficking, prostitution and the spread of HIV/AIDS. The Ministry of Education wanted to increase school attendance and, at the same time, improve the quality of teaching. The Minister of Environment had the particularly delicate task of establishing a balance between the requirements of economic development and the protection of natural resources for the future, including in the interests of the indigenous peoples.

155. Implementation of these promises and plans would go a long way towards addressing the problems which the Special Representative has raised. He therefore appeals to the international community to be available as a supportive partner for this enormous challenge. Cooperation to make possible legal proceedings against those responsible for the massive human rights violations of 1975-1979 is only one, though very important, first step. Advice and concrete assistance will be required for several of the programmes listed above, notably measures to put an end to impunity. However, the main responsibility will, of course, remain with the Cambodian authorities.

IV. CONCLUDING REMARKS

156. Human rights practice depends to a large extent on attitudes among the people in power. Ordinary people do normally understand the crucial importance of having rights and ensuring that those rights are respected. Even when political leaders have thoroughly good intentions, human rights norms as expressed in the Constitution and the international conventions need to be underpinned by sound legislation, an effective and independent judiciary and a non-partisan, professional police. Monitoring by the media, opposition parties and voluntary organizations is, of course, essential.

157. This is recognized by many in Cambodia. Indeed, the discussion has moved further. The depth of the impunity problem, the proposal to establish an independent human rights commission and the decision by the Prime Minister to establish a governmental committee on human rights with branches at the local level have spurred discussion on how human rights can be integrated into government policy at all levels and at the same time be monitored by independent structures.

158. Nothing can replace an independent judiciary and an impartial police. Nevertheless, it would be valuable as a complement to develop a human rights approach in all relevant ministries of the Government. Almost all of them should have human rights on their agenda, including those which deal with economic, social and cultural matters. Focal points could be assigned within each ministry which could be coordinated through an inter-ministerial structure.

159. A similar approach could be taken to human rights issues which concern the provincial, district and commune authorities. The purpose would be to keep the human rights dimension in the foreground.

160. It is also important that there is an emphasis on human rights in the work of the National Assembly. In an ideal situation, all members would channel human rights concerns from their constituencies. The commission on human rights in the previous parliament made important contributions to a principled discussion and also developed an approach to investigating complaints from the public. The new commission in the National Assembly assured the Special Representative that it would be active in a similar spirit.

161. Coordination within the government structures should not be confused with the proposal to establish an autonomous commission or office of an ombudsperson for independent monitoring of the human rights situation, including receipt of complaints. Structures of this kind have been successfully established in some of Cambodia's neighbouring States and the time may now have come for Cambodia to start preparing for it. However, it is clear to the Special Representative that the creation of such a commission/office must be based on a law which protects its independence. Methods of appointment and funding should be designed in the same spirit. It is important that the process of establishing the commission/office is conducted in broad consultation with non-governmental organizations, political parties and other institutions, and the public so as to ensure impartiality and credibility.

162. Another important issue in the discussion about human rights structures is the role of non-governmental organizations. Cambodia is fortunate to have several energetic, competent and mature human rights groups. They do concrete development work and most of them at the same time also perform monitoring activities. As with the work of COHCHR, the combination of the two aspects is natural, and indeed they go hand in hand.

163. The Government has now stated that these groups are key partners. However, this spirit requires that the authorities do not undermine or try to co-opt the organizations, but respect them as they are. Their monitoring and reporting work should be welcomed, or at least not prevented. The unjustified arrest of two human rights workers in Sihanoukville in December 1998 was an unfortunate signal and prompted the Special Representative to suggest that the Government should publicly reassure the organizations that their work is and will be respected. The Government should also put before the National Assembly a new draft law on non-governmental organizations which would guarantee freedom of association and be supportive rather than repressive.

164. It is a good omen that such matters are being discussed in Cambodia today. Indeed, the Special Representative wishes to report that he has met with widespread commitment to human rights not only in civil society but also among many officials in the Government, the parliament and the judiciary, as well as among ordinary citizens, including in remote villages.

Annex

LETTER DATED 21 JUNE 1997 FROM THE CO-PRIME MINISTERS OF CAMBODIA ADDRESSED TO THE UNITED NATIONS SECRETARY-GENERAL

Dear Mr. Secretary-General,

On behalf of the Cambodian Government and people, we write to you to ask for the assistance of the United Nations and the international community in bringing to justice those persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979.

The April 1997 resolution on Cambodia of the United Nations Commission on Human Rights requests:

> "the Secretary-General, through his Special Representative, in collaboration with the Centre for Human Rights, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability."

Cambodia does not have the resources or expertise to conduct this very important procedure. Thus, we believe it is necessary to ask for the assistance of the United Nations. We are aware of similar efforts to respond to the genocide and crimes against humanity in Rwanda and the former Yugoslavia, and ask that similar assistance be given to Cambodia.

We believe that crimes of this magnitude are of concern to all persons in the world, as they greatly diminish respect for the most basic human right, the right to life. We hope that the United Nations and international community can assist the Cambodian people in establishing the truth about this period and bring those responsible to justice. Only in this way can this tragedy be brought to a full and final conclusion.

Please, Mr. Secretary-General, accept the assurances of our highest consideration.

(signed): Prince Norodom Ranariddh
First Prime Minister

(signed): Hun Sen
Second Prime Minister

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/102
17 December 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 19 of the provisional agenda

ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

Situation of human rights in Haiti

Note by the secretariat

1. By resolution 1998/58, entitled "Situation of human rights in Haiti", the Commission on Human Rights, inter alia, invited its independent expert, Mr. Adama Dieng, to report to the General Assembly at its fifty-third session and to the Commission on Human Rights at its fifty-fifth session on developments in the human rights situation in Haiti.

2. In keeping with that resolution the independent expert visited Haiti between 9 and 15 August 1998 and presented a report to the General Assembly at its fifty-third session (A/53/355). That report is being made available as a reference document to the present session of the Commission.

3. The independent expert intends to carry out a visit to Haiti in the second half of January 1999. Owing to the late date of that visit, combined with the exigencies of the conference services, the independent expert will not be in a position to present a full report to the Commission at its present session. The independent expert will, however, report to the Commission orally on his visit to Haiti.

GE.98-05217 (E)

UNITED
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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/103
18 February 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 19 of the provisional agenda

ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

Situation of human rights in Somalia

Report of the Special Rapporteur, Ms. Mona Rishmawi, submitted in accordance with Commission on Human Rights resolution 1998/59

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I. MANDATE

1. In its resolution 1998/59 the Commission on Human Rights welcomed the report of the independent expert on the situation of human rights in Somalia (E/CN.4/1998/96) and requested her to report on the human rights situation in Somalia to the Commission at its fifty-fifth session, in particular on the basis of a detailed assessment of the means necessary to establish a programme of advisory services and technical assistance through inter alia, the contribution of agencies and programmes of the United Nations in the field, as well as of the non-governmental sector.

2. Pursuant to that request, the independent expert has been following developments in the human rights situation in Somalia. She also visited the region from 31 October to 13 November 1998. Taking base in Nairobi, Kenya, where the United Nations and international agencies that operate on Somalia are located, she carried out visits to Jowhar in the south of Somalia on 4 and 5 November 1998 and Hargeisa from 9 to 12 November 1998. An attempt to visit Puntland, in particular the towns of Garowe, Gardo and Bossaso, did not materialize for logistical reasons. Moreover, once again, the security situation did not allow the independent expert to pay even a one-day visit to Mogadishu.

3. The independent expert is grateful to all those who assisted her during this mission. Special thanks are due to the Somali human rights defenders, women's groups, other NGOs and individuals. The expert is grateful to all Somali officials who facilitated her visit and provided her with useful information.

4. The independent expert is also thankful to the staff of all the international agencies that met with her. Particular thanks are due to the Resident Humanitarian Coordinator and to the Special Representative of the Secretary-General in Somalia and their staff for their enthusiasm and support for human rights work on Somalia.

5. The independent expert wishes to thank the United Nations Development Programme (UNDP), the United Nations Political Office for Somalia (UNPOS), the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Development Fund for Women (UNIFEM) for sharing their insights and experience with her, especially UNDP, which facilitated the mission. On 13 November 1998, the independent expert attended a regular United Nations country team meeting, which she found useful. The Expert is also thankful to the representatives of intergovernmental organizations, such as the International Organization for Migration (IOM), with whom she met, as well as those of international non-governmental organizations.

6. Thanks are also due to the representatives of various Governments, in particular, those of Denmark, Italy and the United States of America, who spared time to meet with her. Gratitude is also due to the staff of the European Commission - Somalia Unit in Nairobi.

7. On 12 November 1998, the independent expert had a fruitful meeting with Sir Kieran Prendergast, the United Nations Under-Secretary-General for Political Affairs, during his visit to Kenya in relation to the Sudan and Somalia. The objectives of the visit with regard to Somalia were to enable the Under-Secretary-General to listen to the various Somali leaders, as well as external actors, to see what conclusions could be drawn at that stage. Although the Under-Secretary-General did not go to Somalia, he met with the various Somali personalities in Nairobi. The expert discussed the human rights situation in Somalia with him. Questions relating to the integration of justice and human rights issues in the political process were also discussed. The expert was encouraged by the support he expressed for reinforcing human rights work with regard to Somalia.

II. INTRODUCTION

8. Ironically, Somalia is one of the most homogeneous countries in Africa. The vast majority of its population speak the same language, share the same ethnic and tribal background, have the same cultural heritage and practise the same religion, Islam.

9. During 1998, the complex emergency situation continued in Somalia. Most of the country remained submerged in the internal clan conflict that led to the collapse of the central government in 1991. Human life continues to be endangered by the frequent eruption of internal fighting, famine and disease.

10. Somalia is classified among the least developed countries. According to the UNDP Human Development Report 1998 Somalia, average life expectancy in Somalia is estimated at between 41 and 43 years. The mortality rate for children under five years of age exceeds 25 per cent; the primary school enrolment rate is between 13 and 16 per cent; and gross national product (GNP) per capita is between US$ 176 and 200. 1/

11. As UNDP puts it, in most other countries, "any one of these indicators would be considered a national emergency. Yet Somalia's prolonged humanitarian crisis has raised the threshold for what is considered an emergency there - only outright famine conditions and deadly epidemics generate humanitarian response. 2/

12. This humanitarian crisis is frequently attributed to the fact that minimal foreign development aid is allocated to Somalia because of the fighting, since development is not sustainable in this country. What is often overlooked, however, is that although, before 1991, Somalia received one of the highest levels per capita of foreign aid in the world, it still ranked at the bottom of the listing for development indicators, largely owing to the fact that most of the aid was spent on unsuitable projects or lost to widespread corruption. 3/

13. Moreover, the daily consumption of qaat, a mildly narcotic green leaf not considered a controlled drug under United Nations conventions, by most Somali men has a serious adverse impact on Somali society. It contributes to violence within the family and diverts meagre household income away from health and educational needs. It also reduces work hours, and therefore productivity, as chewing sessions normally begin in the early afternoon.

14. Historically, Somalia mainly relied for income on the export of livestock, the most productive part of its economy. The lack of central planning, the destruction of the export infrastructure, such as ports and airports, and outbreaks of livestock disease have severely restricted this source of income. In January 1998, the United Arab Emirates announced a ban on imports of livestock from Somalia, allegedly because of Rift Valley Disease, which affects both livestock and humans. In addition a Saudi Arabian ban on imports, also in 1998, seriously affected the Somali economy and led to population displacement. This issue was discussed during a meeting of the partners of the Inter-Governmental Authority on Development (IGAD) in Rome on 19 and 20 November 1998 and it was decided that the Government of Saudi Arabia would be approached on this matter.

15. The economy is chronically short of labour. As a result, in some areas, particularly in southern Somalia, there are disturbing allegations of seasonal and ad hoc forced labour practised by the militias. Some unprotected minorities, such as the Bantus, are especially affected by this practice. Forced labour takes place in particular on banana plantations that are used by an Italian company, or on former State farms that are currently controlled by the militias. Militias force workers to work on the plantations during the harvesting season. Girls as young as six years old are forced to work.

16. In fact, children often constitute a part of the labour force. Animals are often herded by children. Only 14 to 17 per cent of children between the ages of 6 and 14 are enrolled in school. 4/ The number of boys enrolled is double that of girls. Girls often drop out of school earlier, as the family prefers to invest in a male child. This will undoubtedly have a serious adverse impact on the future participation of women in public life in Somalia, as most will be uneducated.

17. The social and political structure generally favours men. The clan, its elders and militias are the top influential forces in Somalia. The elders and militia are typically men. Although women sometimes encourage clan-based partisan politics, they often make strong calls for peace and reconciliation.

18. Also unfavourable to women is the emergence in several parts of Somalia of a cross-regional and cross-clan Islamic movement known as Al-Itihad. Although Islam has always played a strong role in the country, this fundamentalist movement has introduced a stricter interpretation of Islam to Somalia.

19. Nevertheless, women play a special role in the business community, as well as in the intergovernmental sector. The business community is gaining strength in Somalia, which reflects positively on women. It has been ensuring a level of stability in the country. For instance, businessmen were said to have been responsible for the release of the 10 workers of the International Committee of the Red Cross (ICRC) who were kidnapped in Mogadishu in April 1998 (see para. 52 below).

20. Much of the human rights abuse in Somalia is linked to control of the country's resources. Dispute over land is extremely common. Most affected by these conflicts are minority groups such as the Bantus and Rahanweyn, as will be elaborated on below.

21. On a separate issue, the independent expert remains concerned about the actions of foreign troops in Somalia in 1992 and 1993, which she discussed in her previous report (E/CN.4/1998/96). In the spring of 1998, the United States press revealed further allegations concerning the actions of United States troops in Somalia. In May 1998, a military court in Belgium sentenced a soldier to six months in prison after finding him guilty of racist behaviour while serving with the United Nations Operation in Somalia (UNOSOM) in 1993. The soldier was reportedly accused of sexually abusing a Somali girl, tying a child to a vehicle and forcing a Somali Muslim to eat pork.

22. On 23 December 1998, the Government of Italy transmitted to the independent expert the report of the Gallo Commission of Inquiry into allegations of violations of human rights committed by Italian soldiers serving with UNOSOM. The report is in Italian. The independent expert will reflect on this issue at a later stage, when an English translation is available.

III. THE POLITICAL SITUATION

23. Somalia has been without a central government since 1991 and over 30 factions are fighting in the country. Since 1995, when the mandate of the United Nations Operation in Somalia (UNOSOM) was terminated, several initiatives have been launched to bring peace to Somalia. Most, if not all, of these initiatives were encouraged by external actors. Agreements were reached by the warring factions in Nairobi in 1996, Sodere in January 1997, Sana'a in May 1997 and Cairo in May 1997. None of these agreements were honoured, however. 5/

24. Two initiatives are currently under way. The first initiative was encouraged by the League of Arab States and mediated by Egypt. A meeting was held in Cairo from 12 November to 22 December 1997 at which it was decided to convene a national reconciliation conference in the town of Baidoa, controlled by Hussein Aidid, in February 1998, which would consist of 465 delegates who would elect a presidential council and a prime minister and would adopt a transitional charter, based on a federal system. The venue of the Conference became controversial. There had been previous agreements to hold such a conference in November 1997 in Bossaso, in north-east Somalia, which is controlled by another faction, the National Salvation Council. The leaders of the National Salvation Council considered that the Cairo process intensified conflict among the factions. The unrecognized State of Somaliland also strongly criticized the Cairo process and indicated that it would not attend the Conference, as it does not consider itself part of Somalia. In any event, neither the Bossaso conference nor the Baidoa conference took place.

25. One of the main effects of the Cairo meeting was to bring together the three main Mogadishu faction leaders, Messrs. Ali Mahdi, Osman Atto and Hussein Aidid. They agreed, inter alia, to take all the necessary action to reopen the port and the airport of Mogadishu as soon as possible. However, the port and the airport remain closed at the time of writing this report.

26. Since the Cairo meeting, the factions operating in Mogadishu have been trying to negotiate a common administration. This administration, known as the Benadir government, is only supported by the three main factions, led by

Mr. Ali Mahdi, Mr. Hussein Aidid and Mr. Osman Atto. Three other factions, however, dispute the legitimacy of this administration. Its effectiveness is therefore limited.

27. Another peace initiative is under way under the auspices of IGAD, a subregional entity concerned with issues of development in the Horn of Africa, chaired by President Daniel Arap Moi of Kenya. Ethiopia is leading this initiative in close collaboration with the IGAD Partners' Forum, which comprises several international actors interested in issues relating to development in the Horn of Africa. Italy leads this group for issues concerning Somalia. Although IGAD is considered to be a weak regional forum, many States support the current IGAD initiative and consider that it needs strengthening. 6/ The process is difficult not only because it is not supported by all the factions, but because of differences of opinion between Ethiopia and Egypt on how to achieve peace in Somalia. Several meetings were held under the auspices of IGAD and its partners. The latest such meetings were held in Rome, on 16 and 17, and on 19 and 20 November 1998. The Under-Secretary-General for Political Affairs headed the United Nations delegation to this meeting.

28. The protection of human rights and respect for humanitarian law have not featured prominently in these talks. The independent expert considers that human rights, an issue that cuts across all United Nations activities, including peace-making, should be given more significance in these negotiations. Ethiopia and Egypt have a particular role to play in this regard and should call upon the warring factions in Somalia to sign undertakings at a minimum to refrain from committing the international crimes that are referred to in part III of the present report.

29. The fact that none of these initiatives have produced radical changes on the ground shows the limitations of a top-day peace-making approach in the context of Somalia. Meanwhile, local initiatives to create regional governments generate more hope, for some of them can be considered as building blocks for a federal State.

30. In addition to the self-proclaimed and unrecognized State of Somaliland, Puntland was created in 1998. Unlike Somaliland, which aspires to independence, Puntland envisages regional autonomy within Somalia. The Puntland Constitutional Conference held in Garowe between 15 May and 30 July 1998, was attended by 470 delegates from the Bari, Nugal, Sool and Sanaag regions, and by hundreds of observers from these regions. None of the delegates were women. This is typical: women throughout Somalia are not invited to any of the reconciliation meetings. They sometimes attend anyway, however.

31. The conference ended by formulating a new "social contract" as a basis for the restoration of effective State authority. The creation of Puntland and the attendance at the Conference of representatives of the Sool and Sanaag regions intensified the tension between the north-east and the north-west, since both Somaliland and Puntland claim authority over Sool and Sanaag. Proposals for the creation of Hiranland and Jubbaland, with a status similar to Puntland, are also being discussed.

32. The northern regions of Somalia are the most stable, with some form of administration, the most advanced of which is Somaliland. The rest of the country consists either of regions in crisis, such as Mogadishu and Kismayo, or regions in transition, such as Hiran and Jobba.

IV. LEGAL FRAMEWORK

33. As the independent expert pointed out in her two previous reports, as long as the warlords, the militias and other irregular armed forces continue their fight in Somalia, and until a peaceful settlement is reached, international humanitarian law relating to non-international armed conflict applies in the whole territory of Somalia, irrespective of whether a specific area is engulfed in active fighting or not. This includes the Puntland regional government in the north-east which considers itself as part of Somalia and separatist Somaliland, which is asserting independence, in the absence of international recognition of its separate status.

34. As a result, all parties to the conflict are bound by the laws and customs applicable in armed conflicts not of an international nature, which are mainly aimed at protecting the civilian population from hostilities. They prohibit deliberate attacks upon civilians and outlaw indiscriminate attacks. They forbid attacks on non-military objectives and require precautions when attacking military targets.

35. These rules are embodied in article 3 common to the four Geneva Conventions of 12 August 1949. This jus cogens provision, considered absolutely binding, constitutes the backbone of humanitarian law. 7/ It provides that

> "... each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> (b) taking of hostages;
>
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
>
> (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for."

36. Moreover, the Rome Statute of the International Criminal Court 8/ provides an indication of what constitutes customary international law norms with regard to war crimes committed in an armed conflict not of an international character. In addition to the provisions of common article 3 of the Geneva Conventions mentioned above, the following acts are considered as war crimes under article 8 (2) (e) of the Rome Statute:

"(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the Law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f) [of the Statute], enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the

medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict."

37. All the fighting forces and militias in Somalia are bound both by the provisions of common article 3 of the Geneva Conventions and by article 8 (2) (e) of the Rome Statute.

38. In addition, the Rome Statute defines crimes against humanity, which are also prohibited in the context of Somalia. Crimes against humanity are also prohibited by customary international law and it is now clearer than ever that this category of crimes applies both to government agents and to non-State actors. These crimes, enumerated in article 7 of the Statute, consist of the following acts:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

The definition of these crimes is further elaborated in the Statute.

39. In addition, the Somali factions are bound by the fundamental principles of humanity, even if violations of these principles do not rise to the level of crimes. This topic is currently being considered by the United Nations

Secretary-General, as mandated by the Commission on Human Rights, and the independent expert will reflect on it as the discussion evolves. 2/

V. RESPECT FOR HUMAN RIGHTS AND HUMANITARIAN LAW

40. The ways in which some of the fundamental principles mentioned in the previous section are violated in Somalia are presented below. All the action described constitutes war crimes and/or crimes against humanity which could give rise to universal jurisdiction under customary international law. As a result, domestic courts in any country in the world could exercise jurisdiction over the individuals accused of committing such crimes and could bring them to justice. The Spanish request for the extradition of the Chilean General Pinochet when he visited the United Kingdom in October 1998, should serve as an important signal in this regard. In the light of the severity of the violations in Somalia, the establishment of an international tribunal for Somalia might be envisaged at some stage.

A. Violations of the right to life

41. Violations of the right to life are extremely common in Somalia. Civilians, in particular, children, women and the elderly are the main victims of these attacks. The independent expert was extremely saddened by the killing of Mr. Hassan Gaal, a Somali staff member of the United Nations Development Office for Somalia (UNDOS), on his way from Jowhar to Mogadishu on 4 November 1998. When the vehicle he was travelling in was about 20 kilometres away from Mogadishu, it was apparently attacked by bandits, looking for money. Six of the seven passengers were massacred; the seventh survived because the killers assumed he was dead. The United Nations agencies were deeply affected by this incident.

42. The independent expert was alarmed to learn during her visit to the hospital in Jowhar, a relatively peaceful town in southern Somalia, that two to three persons enter the hospital daily with gunshot wounds as a result of militia or bandit activities.

43. Landmines present a major threat to the right to life. In February 1998, for instance, two landmine explosions in southern Somalia killed eight people and wounded nine others. The first occurred when a vehicle ran over a landmine near the western border with Ethiopia. Clan elders in the region accused the militant Muslim faction, Al-Itihad, of planting such mines. The other explosion occurred the next day on the dusty road between Garbaharrey and El-Al, about 400 kilometres south of Mogadishu. Landmines are a serious problem in Somalia, which is considered to be one of the most mined countries in Africa.

B. Intentional attacks against the civilian population and civilian objects

44. Clan identity in Somalia is stronger than any other identity and beyond the clan there is little sense of community. To the members of a clan the lives of members of other clans simply have less meaning. This often leads to measures close to ethnic cleansing. Minority groups, such as the Bantus and the Rahanweyn, are the main victims of such attitudes.

45. Allegations of the existence of mass graves in Hargeisa and elsewhere are particularly disturbing in this regard. The independent expert examines this issue below in the section on her visit to Hargeisa (sect. VI). The report of a team of forensic experts who examined the sites in Hargeisa is provided in the addendum to the present report (E/CN.4/1999/103/Add.1).

46. In the fighting in the south of Somalia, warriors do not differentiate between combatants, civilians and those who have fallen hors de combat. The fighting factions often use what are known as "technicals", vehicles that have been converted into semi-automatic weapons, to shell areas in a massive and indiscriminate manner. The May and November 1998 fighting around the southern port town of Kismayo claimed many lives. The United Nations and the international aid agencies called for a halt to the use of force, but in vain.

47. Not only the population, but also their property is intentionally attacked. In May 1998, it was reported that during clan fighting between Mr. Hussein Aidid and General Morgan near Kismayo, the road bridge linking Kismayo and Mogadishu was destroyed by General Morgan, causing thousands to flee. The destruction of the bridge made it more difficult to reach the agricultural heartland of the lower Jubba valley and created a food emergency that was difficult for the aid agencies to tackle.

48. Often when the Habir Gedir clan of Mr. Hussein Aidid launches attacks in the Bay and Baikal regions, for instance, villages are looted and burned. The villages around Baidoa have suffered greatly, which has led to mass displacement. Villages are burned to drive the villagers from their land, thereby clearing the area of the other clan. The current occupation of Bay by the Aidid forces is said to be one of the most violent events to have occurred in southern Somalia. It should be noted, in this respect, that ordering the displacement of civilians constitutes a war crime.

49. The United Nations sent a mission to assess the humanitarian needs in the area on 9 November 1998, but the aircraft carrying the members of the mission was shot at and could not land. Another United Nations aircraft was shot at on 18 November 1998 at Bardera as it taxied to the unloading area. The front wheel and cargo bay of the aircraft were damaged. There were no casualties. The pilot was alone in the aircraft. He was extracted by the crew of another United Nations aircraft. The attacker is thought to have been angry with the United Nations for not hiring his car.

C. Treatment of the wounded and sick

50. Hospitals are often raided and civilians and sick militia members in the hospital are attacked and killed. During the independent expert's visit to the region, there was extensive fighting in Kismayo, which claimed civilian lives. The four-member team of Médecins Sans Frontières-Belgium was evacuated on 3 November 1998 because it was anticipated that if the Aidid militia, who were about 12 kilometres away from the hospital, took over, they would attack the hospital looking for wounded militia members. Expatriates were therefore evacuated. Similar action was taken in May 1998 when Kismayo was under siege, also by Aidid forces.

D. Pillage

51. Looting is carried out systematically by members of the militias and by bandits, for instance, during the occupation of the Bay and Baikal regions by the Habir Gedir clan of Mr. Hussein Aidid.

52. Tension was growing in Jowhar when the independent expert visited the town on 4 November 1998, because a businessman contracted by the United Nations to construct a bridge in Belet Weyne had decided to dismantle and loot part of the bridge in Jowhar to fulfil his contract. The United Nations had to reassure the residents of Jowhar that it did not intend to steal their bridge. As a result of this situation, United Nations aid workers were unable to go to Jowhar for several days for fear of revenge.

E. Hostage-taking

53. Abduction and hostage-taking of Somali citizens and of international relief workers have been widespread in Somalia since 1991. Aid workers are kidnapped either for ransom, or to attract attention, or in revenge by Somalis working with them who are dissatisfied with their contracts or salaries. Humanitarian agencies do not operate in areas where there is a high risk of kidnapping and hostage-taking. This inevitably leads to humanitarian crises in these areas.

54. The most serious incident of hostage-taking in 1998 involved the abduction of the 10 members of an ICRC delegation on 15 April 1998, as their aircraft landed in north Mogadishu airport. Five of the abducted were ICRC expatriate staff, two were staff of the International Federation of Red Cross and Red Crescent Societies, one was a staff member of the Somali Red Crescent Society, and two were the plane's pilots. There was one woman among the hostages. The captives included a United States citizen of Somali origin, two Swiss, a Norwegian, a German, a Belgian, a French woman and a Somali. The pilots were from Kenya and South Africa. The hostages were held for 10 days and then released. The elders of the Abgal sub-clan that controls north Mogadishu intervened for their release. There were conflicting reports about the abductors' demands.

55. The kidnapping had very serious consequences for Somalia. As a result of it, ICRC decided to withdraw its remaining expatriate staff in Somalia to Nairobi. United Nations aircraft and those of the international agencies no longer land in north Mogadishu, so that the city is even more isolated than previously.

56. This was not the only incident of kidnapping in Mogadishu in 1998. The independent expert interviewed a UNHCR staff member who had been kidnapped with two other colleagues in February 1998, also in Mogadishu. Their delegation, composed of two women and one man, had been stopped by 15 armed young people, aged about 13 to 16, as it came out of a meeting with faction leader Mr. Osman Atto, whose militia controls part of Mogadishu. The two armed guards accompanying the delegation surrendered. The delegation was brought to an abandoned house for about half an hour. It seems that the kidnapping was carried out by members of a group controlled by Mr. Atto in

order to attract his attention because they had certain grievances with him. The kidnapped persons were released half an hour later by Mr. Atto himself.

57. Piracy at sea is another source of serious concern, especially in the north-eastern zone of Somalia. Occasionally, crews and fishermen are held hostage. Two ships, one Bulgarian and one Syrian were reportedly seized by armed pirates on 13 January 1998. The Bulgarian ship, which had 11 sailors on board, was being towed by the Syrian ship, which had 22 sailors on board, because of engine failure. All 33 men were taken hostage. They were released at the end of January after a ransom was paid.

58. The crew of a ship flying the Taiwanese flag were reportedly captured and held for eight months. They were eventually released in August 1998 after payment of a large sum of money. The amount was considered as a fine imposed by the local shariah court for failure to obtain a fishing licence from the local militia controlling the area.

F. Conscription of children under 15

59. As is clear from the case of the kidnapping of UNHCR staff referred to in paragraph 54 above, children under 15 are commonly recruited by the militias. This is a war crime.

G. Irregular judiciary

60. The unified justice system collapsed in Somalia with the collapse of the central government. Various communities in Somalia apply different rules: the community elders enforce the legal framework that suits them. These rules are usually based on either the customary system, shariah, a combination of both, the laws which before Siad Barre's takeover in 1969 or during his dictatorship, or a mixture of all of them.

61. In her two previous reports (E/CN.4/1997/88 and E/CN.4/1998/96), the independent expert elaborated on some court structures, particularly in Hargeisa and Bossaso. During her latest mission, she was able to gather some information on the shariah courts that are operating in north Mogadishu.

62. The shariah courts are perceived by the population as instruments to establish some law and order in a time of anarchy and therefore help in the fight against criminality. The courts are not set up by the fundamentalist *Al-Itihad* movement, but by the faction leaders who act as interlocutors for the Somali people with the international community.

63. These courts create serious dilemmas for the international agencies whose priority is to carry out humanitarian relief work. The agencies have established as a condition for operating that there must be peace in the communities where they work. When the local community responds by establishing shariah courts that carry out corporal punishment to deter criminals and bandits, the international community is disconcerted. On the one hand, it needs tranquillity, on the other hand, tranquillity is established at the expense of human rights.

64. In Jowhar, the independent expert had the opportunity to interview a former senior judge, who explained the history and functions of the shariah court in Jowhar.

65. After the shariah court in north Mogadishu, which is under the control of Mr. Ali Mahdi, was established in 1994, it established a shariah court in Jowhar in February 1995. The Jowhar court ceased to exist in May 1998 when the judges resigned owing to conflict between the court system and Mr. Ali Mahdi.

66. The court in Jowhar was composed of 11 judges, said to have been selected by the local population, 10 of whom had been educated in mosques. One had graduated from the Teachers College in Mogadishu. All the judges were men. When asked why women were not appointed to the judiciary, the judge answered that judges must be independent. A wife was under the authority of her husband; as long as she was a wife and gave birth to his children, she could not serve as a judge. The response is an example of the deep bias against women in Somalia.

67. The court had considered civil and criminal disputes, as well as family and commercial disputes. As for the applicable law, it had enforced its understanding of the Koran and Sunna following the Shafi'i school of thought.

68. The court had considered an average of four civil cases and one criminal case a day. The criminal cases were brought to the court by the local militias. The local militias also run a prison where persons under arrest are placed.

69. The court had enforced a number of punishments, including the cutting off of hands as a punishment for theft; the cutting off of opposite hand and leg for looting and robbery; and stoning for adultery. The court had enforced five punishments of stoning. In cases of killings, and following the customary law, the killer could be spared the punishment of death if he or she paid the diya, which is a material compensation for the wrongful act.

70. The independent expert was informed that several cases of wife-beating and abuse had been brought before the court by women. The court had reportedly requested the families to mediate between the husband and the wife. Sometimes, the court also seems to have required the husband to give guarantees that he would not abuse his wife. It was also said that in some cases the court had ordered the imprisonment of husbands for wife-beating.

71. There had been no provision for appealing against decisions of the Jowhar court. However, there had been an internal review process to reconsider cases in which there was doubt.

72. The independent expert also learnt that there are five courts functioning in south Mogadishu.

73. It is essential that the international community give a clear message with regard to these courts. Mutilation, cruel treatment and torture, as well as the passing of sentences and the carrying out of executions without judgments being pronounced by a regularly constituted court that affords all

the judicial guarantees recognized as indispensable by civilized peoples, common article 3 of the Geneva Conventions, which specifies crimes that are also considered as war crimes under the Rome Statute of the International Criminal Court. An illustration of the judicial guarantees of fair trial can be found in article 14 of the International Covenant on Civil and Political Rights. It is vital that the international community does not encourage or support these war crimes. As several international agencies are planning training programmes for law enforcement agencies, including the judiciary, it should be made clear that the judiciary can be assisted only when these practices are abandoned and abolished.

H. Rape and other sexual violence

74. Gender discrimination is deeply rooted in Somali society, where the rights of women in both the private and public spheres are seriously undermined. Rape, which was uncommon in Somalia before the war, has become a weapon of war for the militia and bandits, as well as in camps for displaced persons and returnees. Women belonging to minority groups, such as the Bantus and the Rahanweyn, are particularly subject to these crimes.

75. More than 95 per cent of Somali women undergo female genital mutilation, approximately 90 per cent of them the most severe "pharaonic" form. It seems that younger women are more hesitant about the practice, while the older generation of women often support it even more than men.

76. Women now account for almost 90 per cent of the labour force in Somalia. This situation has somewhat improved their status in society. While working outside the household has given women higher status, it has not reduced their work within the household, which remains entirely their responsibility.

I. Discrimination against minorities

77. Non-discrimination is a fundamental principle embodied in the first paragraph of common article 3 of the Geneva Conventions. Although Somali society appears to be homogeneous, there are several minority groups in the country. These minorities have been the main victims of the famine and the civil war. The Bantu minority lives along the banks of the Jubba and Shabelle rivers, which constitute the life lines of Somalia. The Rahanweyn minority lives between these two rivers, in Bay and Bakool. While the Bantus are largely unarmed, the Rahanweyn Resistance Army is armed to some extent, although insignificantly compared to the other groups. Other minorities live in the coastal areas.

78. The Bantus, who are thought to descend from slaves brought to Somalia from other east African countries in the eleventh century, are considered a low-status ethnic group. They frequently suffer discriminatory practices and violence. For instance, the Bantus in the Hiran region require permission to go to Belet Weyne, the main town of the region. They have their own market and they are not allowed to mix with the rest of the population. They are brought into town for hard labour. They have less access to education and fewer economic opportunities than other Somalis. Their villages have been burnt, and Bantu women have been raped. During the civil war, the Bantu

population has been systematically pushed off their land towards the river by militias or bandits. They are now so close to the river that they face a real risk of their settlements being washed away during floods.

79. The independent expert visited the village of Mioco, near Jowhar. The village, on the bank of the river, is home to 175 families. The villagers grow their own food. There is one school in the village with one local teacher. The 45 pupils, girls and boys, study religion, basic mathematics, Somali and basic English. The Italian charity INTERSOS used to assist the school. Militias looted and destroyed the old school building, and the school is now housed in a small hut in the village. External assistance has ceased.

80. The Rahanweyn minority lives on fertile agricultural land and is more advanced in agriculture. It too has been subjected to dispossession and displacement.

J. Displacement

81. Ordering the displacement of population for reasons related to conflict constitutes a war crime under the Rome Statute, unless it is done to preserve the security of the civilians involved or military reasons so demand.

82. Since 1991, there has been a huge outflow of refugees from Somalia. Millions of Somali refugees are living in refugee camps in Kenya, Ethiopia, Djibouti and Yemen. Inside the country, there is a huge and continuous flow of the internally displaced. While UNHCR organizes relief and protection for refugees, the internally displaced receive little attention. As a result, they often cross borders and become refugees for the purpose of receiving humanitarian assistance. The movement of population between Bossaso, in Somalia, and Yemen is a clear example of this trend. UNHCR is the main international agency operating in Somalia with a significant budget. It is the only agency with an office in Hargeisa dealing only with Somaliland. This Hargeisa office is responsible directly to UNHCR Headquarters in Geneva. The rest of the country is covered from Nairobi. In addition to running the refugee camps in the above-mentioned countries, the main work of UNHCR is the repatriation of refugees on a voluntary basis.

83. UNHCR reports that 681 individuals have been repatriated from Kenya to Bossaso; 1,000 from Yemen to Mogadishu and Bossaso; 265 were repatriated from the Mombasa Camp to the islands south of Kismayo in October 1997; and 1,500 still have to be repatriated from the Jonvu Camp for juvenile refugees in Mombasa. According to UNHCR around 10,000 additional individuals have expressed their desire to be repatriated to various parts of Somalia. These repatriations will start in 1999.

84. The receptions organized for returning refugees by UNHCR differs depending on the place. In Mogadishu, for instance, UNHCR maintains a low profile. Those repatriated are provided with US$ 75, food for three months (cereals and, depending on what is available from the World Food Programme (WFP), beans, oil, salt, etc.), blankets, construction materials for those who return to the islands and transportation to their places of origin. The main problem is that there are no adequate programmes to facilitate the reintegration of returnees afterwards.

85. UNHCR insists that its policy is one of voluntary repatriation. As a standard procedure, UNHCR requests all refugees to fill in a form and sign a declaration indicating that they are going to Somalia at their own risk. For some safer areas, such as Somaliland, the form is considered enough and no declaration is required.

86. There are also Somalis in Western European countries. During the mission, the independent expert received reports that some Western countries dump rejected asylum seekers back into Somalia without making any arrangements with the local community. This has led to problems of safety for these rejected asylum-seekers.

87. The European Court of Human Rights has considered at least two cases of rejected asylum seekers who were facing deportation to Somalia. In the case of Amur v. France, decided on 25 June 1996, the Court did not examine the situation in Somalia. The case merely concerned the conditions in which asylum seekers were held at Orly airport. The Court unanimously found France to be in violation of article 5 (1) of the European Convention on Human Rights which deals with the deprivation of liberty. France was ordered to pay the applicant's costs and expenses, plus interest.

88. The case of Ahmed v. Austria, is perhaps more relevant to the present discussion. The case, which was decided on 17 December 1996, involved a Somali who was granted refugee status in Austria on 15 May 1992. In granting that status, the Austrian Minister of the Interior considered that Mr. Ahmed could not be required to return to Somalia, because of his activities in an opposition group and the general situation in Somalia. However, on 25 August 1993, the Graz Regional Court in Austria sentenced Mr. Ahmed to two and a half years for attempted robbery. The Austrian authorities considered that that conviction revoked his refugee status under Austrian law. The Court found Austria to be in violation of article 3 of the European Convention on Human Rights, which states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

89. The Court essentially accepted the assessment that the situation in Somalia had changed hardly at all since 1992. In it decision, the Court stated that the country was still in a state of civil war and fighting was going on between a number of clans vying with each other for control of the country; there was no indication that the dangers to which the applicant would have been exposed in 1992 had ceased to exist or that any public authority would be able to protect him. The Court therefore reached the conclusion that "the applicant's deportation to Somalia would breach article 3 of the Convention for as long as he faces serious risk of being subjected there to torture or inhuman or degrading treatment".

90. This is a significant precedent that will undoubtedly affect the manner in which the European Court will view the case of Regina v. Secretary of State for the Home Department, Ex parte Aden, if it comes before it. This case was decided on 2 April 1998 by the Judicial Committee of the House of Lords of the United Kingdom of Great Britain and Norther Ireland. In the Aden case, the majority conclusion was, unfortunately, that where a state of civil war existed, the asylum seeker must be able to show what was termed a "differential impact", in other words that "he must be able to show fear of

persecution ... over and above the ordinary risks of clan warfare". However, it was clearly stated that the decision had been reached on the understanding that "there is no question of Mr. Aden being returned to Somalia as things stand. He and his wife and children have been given exceptional leave to remain in the United Kingdom on humanitarian grounds. The only effect of a decision to refuse refugee status is that they will be denied the additional benefits which refugee status attracts".

91. It is in the above-mentioned context, in particular the ruling of the European Court of Human Rights in the case of Ahmed v. Austria, that the independent expert views the question of rejected asylum seekers. On 20 November 1998, the independent expert appealed to the Government of Australia not to deport Mr. Sadiq Shek, a Somali asylum seeker who was facing imminent deportation to Somalia. The independent expert was pleased to learn later that the Government of Australia had heeded a request by the Committee Against Torture and had decided not to deport Mr. Shek as long as there was a risk of his being tortured in Somalia.

92. It was reported to the independent expert during her mission to Somalia that Scandinavian countries have been involved in a number of cases of rejected asylum seekers being dumped in various parts of Somalia. Canada, the Netherlands and the United States of America are also possibly implicated in similar practices.

93. The independent expert met with a representative of Denmark in Nairobi to clarify this issue. It seems that Scandinavian countries are changing their approach with regard to requests for asylum by Somalis. Since mid-1995, joint fact-finding missions have been carried out by the Nordic countries. They have concluded that some areas in Somalia, such as the north, excluding Sool and Sanaag, are safe. Some Scandinavian countries are returning people to these areas when their requests for asylum are rejected. Forced repatriations started a year and a half ago and since then seven individuals have been returned. To support the integration of the rejected asylum seekers, the Scandinavians have embarked on providing some development assistance to the local authorities in the areas concerned to encourage them to accept the rejected asylum seekers. This has created a fear that the refugees and returnees could be used as bargaining tools and a profit-making enterprise for these authorities.

94. On the other hand, IOM is currently implementing a selective pilot project to repatriate talented individuals to the safe area of Somaliland and possibly Puntland. A representative of IOM remarked that the contribution of returnees to Somaliland had already made a difference, as such individuals were importing new ideas, skills and attitudes. IOM, however, stressed the need to monitor the situation of returnees to ensure their integration and safety.

95. There is also a serious problem of internal displacement in Somalia. It is estimated that in Bossasa the internally displaced constitute up to 70 per cent of the population. UNDP and UNICEF provide some assistance, but this is highly inadequate. As a result, the crime rate in Bossaso is increasing, leading to considerable tension between the original population and the internally displaced.

96. The situation in the Bay, Bakool and Gedo regions seems to be very serious. A joint mission by the Somalia Food Security Assessment Unit (FSAU) and Action contre la Faim (ACF) to these regions, carried out between 14 to 18 November 1998 to investigate movements of people from Bay and Bakool to Gedo, concluded that most movements are not seasonal but a sign of crisis.

97. The food security and nutritional situation among the internally displaced persons is reported to be critical, and the risk of further deterioration over the coming weeks is serious. In addition, more movements are expected in the next few weeks. FSAU and ACF maintained that assistance, with appropriate follow-up, should be addressed to the place of origin of the internally displaced persons to avoid further population movements.

98. About 700 households have left the Wajir district over the past two months because of the lack of rain, shortage of food and looted or burned houses. These internally displaced persons are mainly women and children; men are often reported to be looking for job opportunities in the riverine areas. An additional 2,600 households in Bakool are at risk of being displaced. From Bay, the movement started four months ago, with a daily average of five households arriving at Burdhubo in the Gedo region, where a total of 370 families are settled. Nutritional screening carried out in Luuq, Burdhubo and Bullo Hawa showed that 50 per cent of the people are suffering from acute malnutrition and 20 per cent from severe malnutrition. Not much assistance is being provided to these displaced persons.

99. In this respect, the independent expert wishes to draw attention to the Guiding Principles on Internal Displacement prepared by the Representative of the United Nations Secretary-General on internally displaced persons contained in E/CN.4/1998/53/Add.2, which address the specific needs of the internally displaced and identify the rights and responsibilities relevant to their protection of the internally displaced. The Principles were welcomed by the Inter-Agency Standing Committee which encouraged its members to share them with their Executive Boards for further dissemination. Principle 3 states:

> "1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
>
> 2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request."

Principle 5 states:

> "All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons."

VI. VISIT TO HARGEISA

100. The independent expert visited Hargeisa from 9 to 12 November 1998. During her visit she met with the vice-president of Somaliland, the minister for foreign affairs, the minister of justice and the president of the supreme court, as well as various other officials, personalities and ordinary citizens. The independent expert also met with the United Nations representatives in the area, as well as NGOs. She is grateful to all those who met with her.

A. General

101. This was the third visit of the independent expert to the self-proclaimed and unrecognized state of Somaliland. The expert noted the steady improvement of security in Hargeisa. As a result of this enhanced security, there are sometimes up to 80 United Nations staff working in Somaliland. This is the largest concentration of United Nations staff in any part of Somalia. The Hargeisa airport has a new building and is now functioning with a proper airstrip.

102. There is, however, conflict in Sanaag and Sool. These regions, which fall within the historical British colonial borders of Somaliland, are mainly populated by the Darod clan, which opposes the Issac clan that controls Somaliland. The Darod clan is loyal to Puntland. Sanaag and Sool were represented at the Puntland Constitutional Conference that resulted in the creation of Puntland in July 1998. Because of these two regions, tension between Somaliland and Puntland is growing, especially as Somaliland moved towards separation from Somalia in 1991, claiming the areas which had been under British rule.

103. The economic situation in Somaliland is improving, although international assistance to the area is meagre. The economy is mainly based on revenues amounting to around US$ 320 million a year from Somalilanders living abroad. The authorities are also trying to collect revenues through taxes, fees for certain services such as licensing vehicles, and import and export taxes. The port of Berbera, which is frequently used by Ethiopia, produces some income. The main source of income, however, is the livestock trade and the economy has been severely affected by the Saudi Arabian ban on livestock imports from Somaliland because of fear of disease,

104. The revenues that the authorities generate do not suffice to cover expenses. For instance, they have stopped issuing birth certificates because they lack the funds to do so.

105. Political opposition to the leadership of Mr. Ibrahim Egal is manifested in a peaceful way. An attempt to arrest the leader of the Somali National Movement (SNM), because of differences between him and Mr. Egal, created an uproar in Hargeisa and had to be abandoned by the authorities.

106. The newspaper Jamhuuriya, whose owner died on 9 November 1998, expresses many of the grievances of the population. As a result, its chief editor has

been frequently arrested and released. The independent expert has several times expressed her concern to the authorities regarding his being arrested. Nevertheless, there is some form of freedom of expression.

107. Several international and local non-governmental organizations are based in Hargeisa. However, the authorities perceive both local and international NGOs as their competitors for foreign aid and are therefore establishing rules and regulations governing NGO conduct. A proposed agreement between the authorities and the NGOs was circulated amongst NGOs for their consideration during the visit of the independent expert to Hargeisa. The agreement will eventually be endorsed by the parliament and thereafter will have force of law. The agreement is based on the Ethiopian centralized model. NGOs are not generally opposed to this agreement.

108. There is willingness on the part of the authorities to look favourably at human rights issues and concerns. Amnesty International conducted a useful seminar in Hargeisa from 17 to 19 October 1998, entitled "Human rights awareness and action". While the representatives of Amnesty International were in Hargeisa, all the members of the government signed Amnesty International's book on the Universal Declaration of Human Rights, and it seems that the government is considering incorporating the Declaration in the laws of Somaliland. This will be a very significant step forward. As for implementation, it appears that the authorities are open to elaborating an overall plan of action on human rights.

109. The independent expert was pleased to learn that the last prisoner held under the emergency law was released in October 1998 following Amnesty International's visit. The independent expert commends the authorities for this action.

110. The status of women has improved, but there seems to be some backlash. Although women have emerged in the business and NGO sector, the empowerment of women in the social and political sector has yet to take place. Currently, there are no women occupying public positions nor are there any women judges, although there are women law graduates. The women's groups mentioned that they had found the Amnesty International Workshop useful with regard to the rights of women. Several educated men mentioned to the independent expert that they believed that a woman's working outside the household created tension within the family, even divorce, especially when she had a separate income.

111. The independent expert visited the orphanage in Hargeisa, which falls under the jurisdiction of the ministry of justice. There are 352 children there, including small infants of a few days old. The children are attended to by 35 foster mothers. As a Moslem country, Somalia, including Somaliland, does not allow adoption. Islam, however, recognizes a similar system, known as Kafala. The Islamic system of adoption is not fully explored in Somalia and Somaliland.

112. Somalia, including Somaliland, is one of the most mined countries in Africa. The independent expert is pleased that work to de-mine Somaliland is finally under way, with the support of UNDP and its Somali Civic Protection Programme. So far, up to 500 mixed anti-personnel and anti-tank mines,

unexploded ordinances (UXO), artillery shells and bullets have reportedly been collected. The work is being carried out by 63 local people, trained by UNDP. for the National De-Mining Agency, which was established in 1996.

113. Hargeisa was de-mined, although not fully, in 1993. Work on de-mining the town of Burao, mined in 1995 during the civil war, started in July 1998. De-mining resolves some of the problems of displacement. It has been noted that as soon as an area is de-mined the population return to their former places of living. Although the government has recently passed a law committing itself to destroying the mines that are being collected, this is still not carried out.

B. The administration of justice

114. The independent expert visited the supreme court in Hargeisa, the ministry of justice, the office of the police commissioner and the Hargeisa central prison.

115. The independent expert described the judicial system in Somaliland in her two previous reports. The situation remains the same. Although five new judges were recently appointed, bringing the number of judges in Somaliland to 60, none of them were women. It seems that various officials support the appointment of women judges, but consider that they might be rejected by the society. The independent expert suggested that appointing women as juvenile court judges could be an appropriate start.

116. Various officials remarked that the court system is weak and in need of international assistance. They requested that the United Nations place 20 judges from Arab and Muslim countries in Somaliland for two years to carry out the administration of justice and to train judges and lawyers to take over eventually.

117. For the international community to embark on an effort to assist this region with the administration of justice, it is necessary for Somaliland to harmonize its laws with international human rights laws. The emergency law, which the authorities have resorted to on many occasions, contains many draconian provisions. For instance it permits the detention of a person for up to one year without charge or trial.

118. In addition, the courts are greatly under-resourced. Many crucial laws are out of print and copies of them can only be found on the bookshelves of some prominent jurists. The minister of justice informed the independent expert that once a law is adopted by parliament, every minister and court is eventually provided with photocopies of it. A special office in the ministry of justice was established to collect such copies and file them in the archives.

119. The independent expert was informed that there are eight prisons in Somaliland, in Boorama, Gabile, Hargeisa, Berbera, Bel Gubedli, Burao, Odweyne and Ergabo. They house 900 prisoners. Most are imprisoned on charges of theft and robbery.

120. The independent expert visited Hargeisa Central Prison. There were 407 prisoners in this jail, most of them male. Of these, 118 were sentenced prisoners and 189 were pending charges or trial. There are 24 prisoners on death-row. The physical conditions in the prison are harsh; it is dirty and overcrowded. The families are allowed to bring food to their relatives. The authorities do not have the means to improve the prison conditions and no foreign assistance is being provided for this purpose. Amnesty International also visited the prison.

121. The independent expert interviewed some prisoners whose cases before the courts have been pending for a long time - one case since 1992. The expert also met with one national of Cameroon who was arrested in September 1998 with his brother. He said that they were passing through the area and they had no family or friends in Somaliland. Because of the lack of diplomatic relations between Cameroon and Somaliland, the prisoners were not visited by anybody. The minister of justice informed the expert that he was willing to allow the ICRC to visit them. The expert therefore referred the case to the ICRC.

122. Adults and juveniles are not separated. The independent expert found a 12-year-old girl in the women's section and was informed that the girl was there for her protection as she had run away from home and that she was not remanded on any charge. The authorities indicated that she would be kept in prison until her family claimed her. The independent expert urged them to find a solution other than putting a child who had not committed any crime in jail. She brought this case to the attention of UNICEF, the women's NGOs and the human rights groups.

123. In this connection, an expert informed the independent expert that the number of troubled children had increased. At least one third of children between the ages of 5 and 15 suffer from nightmares, difficulties in concentrating, restlessness, aggressiveness and a sense of isolation. Adults are not immune either. At least two-thirds of families have members with mental problems. The expert also learnt that many mentally disturbed individuals are kept in chains at home. The network of family relations is breaking down and many changes are taking place in the traditional family structure. All these changes are the legacy of war.

124. The expert also visited the office of the police commissioner and met with the head of the training unit. She was informed that the Mandheera Police Training Centre had opened on 15 October 1998 and programmes for training the police in this facility were being carried out. At the time of the independent expert's visit a training course for 125 people aged between 25 and 35 who had been policemen before the outbreak of the civil war was being conducted. It was the second training course that was carried out for this group of former policemen. The four month training course will provide them with a basic knowledge of general police duties, financial laws and investigation methodology. Trainees are also provided with copies of the Somali Penal Code, which is explained to them with relevant examples.

125. This new establishment has logistical difficulties, however. For instance, it has no running water, adequate communication system, library, medical facilities or adequate space.

C. The mass graves

126. In her previous report, the independent expert examined the issue of the discovery of mass graves in Hargeisa in May 1998. She requested the Office of the United Nations High Commissioner for Human Rights to send a team of forensic experts to the site. Two forensic experts were sent to Hargeisa in December 1998. Their report is issued as an addendum to the present report (E/CN.4/1999/103/Add.1). The independent expert endorses the recommendations, contained therein, made by the team of forensic experts.

127. As the independent expert reported last year, the Technical Committee for the Investigation of War Crimes was established. In November 1998, she visited the premises of the Committee, which were equipped through a grant of US$ 20,000 from the Embassy of the United States of America in Djibouti.

128. Many alleged mass graves have been identified by the Committee, including in Berbera. However, lack of human and financial resources made it impossible for the Committee to visit them all, and only the sites in the vicinity of Hargeisa could be explored. The Committee also lacks adequate expertise, such as that of forensic anthropologists and archaeologists, to organize workshops on war crimes, excavations and related investigations.

129. The independent expert had the opportunity to interview one key witness, a truck driver who was forced to dig the mass graves and bury the bodies found there. He informed the independent expert that, on 58 days in the spring of 1988, military officers came to his home and ordered him to accompany them. On the way, they stopped at the Ministry of Public Works, where he used to work, to retrieve an excavator. He said that he was then taken to the military headquarters where he was ordered to bury between 150 and 180 bodies a day. The individuals had just been summarily executed. In fact he sometimes heard the executions as he was digging. The bodies were tied together in groups and were lying dead. Some were in military uniforms, others were civilians, including women and children.

130. Mass killings constitute war crimes and crimes against humanity. The international community is strongly asserting individual criminal responsibility for genocide, war crimes and crimes against humanity as is evident in the establishment of the International Criminal Court, as well as the Spanish request for the extradition of General Pinochet during his visit to the United Kingdom, which were mentioned above. As was also indicated above, the establishment of an international tribunal for Somalia could also be envisaged at some stage. The independent expert continues to believe that the most important work at present, however, is the preservation of evidence in a professional manner. The Technical Committee for the Investigation of War Crimes should be assisted in its work.

VII. BUILDING A HUMAN RIGHTS NUCLEUS IN SOMALIA

A. Office of the High Commissioner for Somalia

131. In 1993, the Commission on Human Rights, in its resolution 1993/86, appointed an independent expert with a mandate to report on the human rights situation in Somalia and to find the best ways and means of implementing a

programme of technical assistance in the field of human rights. After undertaking two missions to Somalia, the independent expert recommended in her 1998 report several possibilities for building a nucleus for human rights work in Somalia and suggested the appointment of a human rights officer to fulfil this task. The High Commissioner for Human Rights endorsed this recommendation, and proceeded with the appointment of this officer who will be stationed in Nairobi, like other United Nations agency staff dealing with Somalia. The Commission on Human Rights welcomed this decision in its resolution 1998/59. The human rights officer was selected in the autumn of 1998. He has not so far been placed in Nairobi, however.

132. The independent expert visited Nairobi at the time when the international agencies were preparing the United Nations Consolidated Inter-Agency Appeal for Somalia for 1999. The independent expert and the Office of the United Nations High Commissioner for Human Rights (OHCHR) were invited to contribute to the appeal. Consequently, the appeal now contains a section on human rights as a cross-sectoral priority, including activities of OHCHR, UNIFEM, UNICEF, UNDP and the Office for the Coordination of Humanitarian Affairs (OCHA). In addition, a separate project document setting out the costs of placing the human rights officer in Nairobi for two years is being prepared by OHCHR.

134. The independent expert welcomes this attempt by the various agencies to integrate human rights into their activities. The mainstreaming of human rights within the activities of the agencies was undoubtedly boosted by the directions of the United Nations Secretary-General in his reform agenda, in which he considered human rights as a cross-cutting theme of all United Nations activities and called upon the agencies to integrate human rights, especially at the country level. 10/. The Secretary-General designated the High Commissioner for Human Rights as focal point to assess all United Nations technical assistance activities in this field.

134. The project for the placement in Nairobi of the human rights officer for Somalia will be implemented in the framework of the Memorandum of Understanding between the United Nations Development Programme and the United Nations High Commissioner for Human Rights of 4 March 1998. As a result, the human rights officer will be based in the UNDP-Somalia premises in Nairobi, and will use the logistical and administrative resources of that office. The High Commissioner for Human Rights will provide policy direction and the necessary substantive technical supervision. Administrative supervision and facilitation in Nairobi will be provided by the Chief of the United Nations Coordination Unit (UNCU) in UNDP-Somalia.

135. The human rights officer will pursue the following objectives:

(a) Monitoring the human rights situation in Somalia;

(b) Mainstreaming and integrating a human rights perspective into the work of all the United Nations agencies regarding Somalia;

(c) Providing technical assistance in the field of human rights;

(d) Supporting Somali human rights NGOs;

(e) Raising awareness in the area of the administration of justice; and

(f) Assisting the independent expert in fulfilling her mandate.

136. The independent expert was extremely encouraged that various government representatives in Nairobi looked with enthusiasm at this project. The representatives of Italy, Denmark, the United States and the European Union were all positive about this initiative and expressed interest in supporting it financially.

137. The independent expert hopes that, as the resolution of logistical questions is well under way, the officer will soon start carrying out human rights duties for Somalia.

B. Current technical cooperation programmes in the field of human rights

138. A number of international groups and agencies carry out scattered technical assistance programmes in the field of human rights. They are not conducted in the framework of an overall strategy, or national plan, to enhance human rights protection in Somalia. Neither are they carried out by experts. A brief outline of some of the projects that are currently being implemented is provided below.

139. UNDP has been elaborating a civil protection programme as part of its strategy of strengthening human rights through governance. A helpful report on human rights within the civil protection project has been prepared by a consultant. It explores questions such as entry points for human rights education in the Somali context and the development of human rights training material. 11/ Useful practical work has been done in Somaliland in the area of training the police and law enforcement agencies with respect to human rights. There are also activities under this programme to promote the participation of women in civil governance, as well as activities in the area of reconciliation and governance, conflict resolution and peace-building, and de-mining. The programme activities are included in the Inter-agency Consolidated Appeal for 1999. This programme is a natural counterpart to OHCHR in this field and it is fortunate that the OHCHR human rights officer for Somalia will be located in the same premises as the UNDP civil protection programme in Nairobi.

140. UNIFEM is starting a campaign to integrate women's rights into the work of the United Nations agencies. Its programme on Somalia is focused on female genital mutilation, as well as on building capacities and gender balance in local NGOs.

141. UNICEF has a major programme in Somalia. It is trying to take a rights-based approach in its activities. UNICEF has wide access throughout Somalia. It rehabilitates the water in most of the country; it carries out vaccination campaigns and supports the educational system. In 1999, UNICEF is planning to target the protection of children with special needs. It will focus on internally displaced children and the reintegration of children attached to militias.

142. UNESCO has produced a peace education kit. It has expressed interest in human rights issues and more specifically in developing a human rights-oriented curriculum.

143. The War-Torn Societies Project, under its Somalia programme, which was due to end in December 1998, has organized elaborate research workshops in north-east Somalia on questions relating to the basic institutions of government at the local level; social integration with particular focus on the militia in terms of poverty, criminality, and attitude; and essential social services.

144. Two local human rights groups are operating in Mogadishu, the most important of which is the Ismail Jumale Centre for Human Rights. There are also two human rights groups in Hargeisa: The Guardians of Liberties and the Horn of Africa Human Rights Watch. These groups monitor human rights abuses in their regions. They need substantial support.

145. Amnesty International has carried out two workshops concerning human rights work in Somalia. One workshop took place in Nairobi in 1997, the other in Hargeisa in 1998. The workshop in Hargeisa had a very positive impact (see para. 108 above).

146. The Life and Peace Institute (LPI) regional office in Nairobi started a programme of training Somali trainers in 1994. This programme includes a human rights component. Two more training courses were organized in 1996 and there has been a yearly two-week follow-up course, in Nairobi in 1997 and in Hargeisa in 1998. The team of more than 20 trainers developed a curriculum on civic education programmes on two cluster areas. The first includes questions of democracy, gender, development, leadership and human rights. The second focuses on peace-building issues, such as conflict transformation, environment, resources and conflict, small arms and handguns awareness-raising. In 1997, 30 such workshops were organized. For the period June 1998-May 1999, up to 48 further workshops have been programmed.

147. The independent expert commends all the international agencies that are integrating human rights into their work on Somalia. The early placement of a human rights officer in Nairobi should help these agencies to consolidate their efforts. The independent expert also considers that the United Nations should be willing to assist the regional administrations within Somalia in improving their human rights performance, especially if these authorities are willing to bring their laws into conformity with human rights standards. In this context, the international community should send a clear message that, while calling for security, it will not support law enforcement efforts the objectives and policies of which violate international human rights norms. The regional administrations should be encouraged to carry out their law enforcement work within structures that respect the rule of law and human rights.

148. The areas that are experiencing recovery in the north-west and north-east, otherwise known as Somaliland and Puntland, are ripe for structured technical assistance programmes. In the rest of the country, the focus should be on monitoring the human rights situation and raising awareness on human rights norms. In this respect, wide dissemination of human rights instruments

and their translation into Somali is essential. It is also important to simplify human rights texts and to work with UNICEF, UNDP and UNESCO on using oral media, such as BBC-Somalia to promote human rights principles.

149. In her previous report, the independent expert identified four areas the programme can begin to address. These are:

(a) Support for Somali human rights defenders;

(b) Integrating human rights into the work of the United Nations agencies;

(c) Raising awareness on women's rights;

(d) Raising human rights awareness in the area of law enforcement.

150. These areas remain of vital concern. To build a solid nucleus for human rights work in Somalia, better discussion and understanding of human rights issues, structures and dimensions are needed. The agencies themselves highlighted this need to the independent expert and expressed enthusiasm at the prospect of working with the human rights officer in this regard. In the complex situation of Somalia, it is important that an overall working strategy on human rights matters be developed.

151. The integration approach is not sufficient, however. A working strategy should be developed so that structured programmes, not piece-meal activities, are carried out. This is an important challenge for the human rights officer, who should serve as a focal point for these discussions within the United Nations agencies and beyond.

152. The clarification of this strategy within the United Nations agencies, the other international agencies, international and Somali NGOs should lead to a coordinated human rights work on Somalia. Only then can specific technical assistance programmes be worked out that can leave some lasting impact.

VIII. CONCLUSIONS AND RECOMMENDATIONS

153. Despite the crisis, the Somali people are still smiling, although their smile is steadily fading away. It is essential that their smile does not disappear completely. The internationcal community should find ways to assure the Somali civilians, the unarmed minorities, women and children and the elderly that they are not deserted.

154. The international community is still negotiating with the warring factions, which ironically, still serve as the interlocutors of the Somali people with the outside world. It is appropriate that the Commission on Human Rights express its wish that human rights issues be integrated in the peace negotiations, especially those sponsored by the United Nations, its regional partners or its Member States.

155. Currently, human rights and humanitarian law do not have a prominent place in these talks. The parties should be called upon to refrain, at a

minimum, from committing the international crimes that are discussed in the present report, so that the lives of innocent civilians, women, children and the elderly are protected.

156. The independent expert commends the international agencies that are attempting to integrate human rights into their work. The time is indeed ripe for starting to develop a nucleus for human rights work in Somalia today, especially in the areas experiencing recovery.

157. The independent expert looks forward to the placement of the human rights officer in Nairobi in the near future, so that an overall strategy can be developed and meaningful programmes carried out.

Notes

1/ This is at the average exchange rate in 1996-1997, giving a real GNP per capita (Purchasing Power Parity) of US$ 600 to 700. See UNDP, Human Development Report Somalia 1998.

2/ UNDP, Human Development Report Somalia 1998, p.12.

3/ Michael Maren, The Road to Hell: The Ravaging Effects of Foreign Aid and International Charity, New York, Free Press, 1996.

4/ Human Development Report Somalia 1998, p. 16.

5/ See the report on the situation in Somalia of the Secretary-General of the Organization of African Unity (OAU) to the sixty-seventh session of the Council of Ministers of OAU held in Addis Ababa, Ethiopia, from 23 to 27 February 1998 (CM/2034 (LXVII) (d), p.6).

6/ The OAU Council of Ministers resolved in February 1998 to call upon the international community "to closely coordinate their efforts with OAU and IGAD in order to facilitate a peaceful and sustainable settlement of the conflict in Somalia". See OAU document CM/Dec.(LXVII)Rev.1.

7/ Humanity for All: The International Red Cross and Red Crescent Movement, Henry Dunant Institute, p. 556.

8/ The Rome Statute of the International Criminal Court was adopted by the United Nations Diplomatic Conference of Plenipotentiaries for the Establishment of an International Criminal Court. The Statute was adopted by a non-recorded vote of 120 in favour to 7 against with 21 abstentions. See United Nations press release L/ROM/22 of 17 July 1998. The Court will come into existence after 60 States ratify the Statute. It will have jurisdiction

mainly with regard to nationals of States parties or to crimes committed on the territory of a State party. It will not apply its jurisdiction retroactively.

9/ See analytical report of the Secretary-General on fundamental standards of humanity, submitted pursuant to Commission on Human Rights resolution 1997/21 (E/CN.4/1998/87).

10/ "Renewing the United Nations: a programme for reform" (A/51/950).

11/ Lisa Ann Kurbiel, "Human rights within the Somalia Civil Protection Programme, Somali Civil Protection Programme UNDP/UNOPS", (SOM/97/002), 30 April 1998.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/103/Add.1
30 November 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 19 of the provisional agenda

ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

Situation of human rights in Somalia

Addendum

Forensic report: preliminary assessment of mass graves in the vicinity of Hargeisa, Somalia

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* The full report of the mission is reproduced in the annex in the language of submission only.

GE.98-14685 (E)

SUMMARY REPORT

1. The mission was carried out by Physicians for Human Rights (PHR) under the auspices of the Office of the United Nations High Commissioner for Human Rights in accordance with Commission on Human Rights resolution 1997/47 of 11 April 1997. The mission, to conduct an on-site assessment of alleged mass graves in the vicinity of Hargeisa, Somalia, was carried out at the request of the independent expert of the Commission on Human Rights on the situation of human rights in Somalia, Ms. Mona Rishmawi. The forensic team provided by PHR consisted of forensic anthropology experts William D. Haglund, PhD, from Seattle, Washington, United States of America, and Owen B. Beattie, PhD, from Edmonton, Alberta, Canada. Between 17 and 21 December 1997, the forensic team observed and examined a minimum of 92, and possibly as many as 116 alleged graves in three areas on the southern and southwestern outskirts of Hargeisa. These sites are referred to locally as the Milk Factory site, the Malko Durduro Elementary School site and the Badhka site. Test excavations at suspected mass grave features were undertaken by the team at two of the sites, one in the area of the Badhka site (designated site BDK and feature BDK-1) and the other in the area of the Malko Durduro Elementary School site (designated site MKD and feature MKD-1). These features were subsequently shown to be graves.

2. Feature BDK-1 contains one young adult male and one adult male individual (designated BDK-1-1 and BDK-1-2, respectively), both completely skeletonized. The clothed adult male has indications of cranial trauma, in particular on the left side of the cranial vault. No evidence of trauma is seen on the unclothed young adult male. Remnants of preserved hair and fingernails are found with these individuals. Loops of cotton-like material associated with the individuals may be discarded ligatures. Patterned impressions on the floor of the grave are consistent with the grave having been dug by an earth moving machine, as stated by a witness to the Government's Technical Committee for the Investigation of War Crimes of the Siad Barré Regime (hereafter referred to as the Technical Committee). The context of these discoveries leads the forensic team to conclude that many of the other mound features at BDK and nearby sites are likely to contain human remains.

3. Recent superficial disturbance by children of a suspected grave at the Malko Durduro Elementary School site (MKD) had partially exposed human skeletal remains and a possible rope ligature. This information had been reported to members of the Technical Committee. The forensic team decided to examine these discoveries further, partly in an effort to secure forensic information before additional damage could be done to the site, and to establish the nature of the ligature. Four completely skeletonized adult male individuals were discovered in feature MKD-1, and designated MKD-1-1 to MKD-1-4. They were partially excavated in relief and closely examined.

4. Three of the individuals (MKD-1-1, MKD-1-2, and MKD-1-3) are tightly grouped and bound to each other by a ligature, consisting of a single continuous length of 4 mm wide rope (organic fibre, double strand, Z-spun). These three individuals have knotted loops of this rope binding their wrists together behind their back, with the rope connecting them to each other in a line. MKD-1-1 and MKD-1-2 are clothed, while MKD-1-3 is unclothed.

The fourth individual (MKD-1-4) was discovered in the south wall of the excavation and is not totally exposed. This clothed individual is not connected by ligature to the other three. No clear indications of trauma were identified in the three individuals linked by the ligature. The fourth individual (MKD-1-4) has fractures at the junction of the left ascending ramus of the mandible to the mandibular body. Preserved hair and fingernails are found associated with all four of these individuals.

5. During the excavations of BDK-1 and MKD-1, the forensic team regularly reviewed in detail all procedures and discoveries with members of the Technical Committee and their professional associates. This was done within the context of an ongoing field workshop, and was supplemented at the end of the mission by a formal classroom presentation and discussion.

6. The forensic team, having observed a large number of suspected and known mass grave sites in the vicinity of Hargeisa, Somalia, and having conducted an assessment examination of two graves containing a minimum of six individuals exhibiting evidence of perimortem injury, binding and haphazard burial, concludes that human rights violations were committed against these individuals. Therefore, the team recommends that the United Nations, in consultation with the Technical Committee:

(a) Provide assistance to the Technical Committee relating to the procedures for the collection of witness testimony;

(b) Provide assistance to the Technical Committee relating to compiling a comprehensive grave registry, including detailed survey, in the vicinity of Hargeisa, as well as in other regions and towns with suspected mass graves;

(c) Establish a means of providing financial support for the conduct of thorough investigations of alleged and known mass grave sites and human rights violations linked to the period from 1988 to the present; and

(d) In carrying out recommendation (c), (i) authorize and assemble an international team of forensic specialists, to work with local professionals for the purpose of conducting investigations of selected mass graves, and (ii) encourage and support additional forensic investigations, conducted by local professionals trained in forensic methods, and assisted by international specialists.

7. These initiatives have the potential to reveal a series of human rights violations resulting in the deaths of many individuals. The value of this information, above and beyond the obligation to expose and document such violations, relates to the knowledge imparted to the survivors about the true circumstances leading to the disappearance of their kin, and the ability of the community and society to deal with this knowledge through the repatriation and reburial of their dead. The forensic evidence compiled provides the foundation for any future pursuit of legal accountability for identified crimes.

Annex

Report of a mission to conduct an on-site assessment of alleged mass graves in the vicinity of Hargeisa, Somalia

I. INTRODUCTION

A. Mandate and structure of the mission

1. This mission was carried out by PHR under the auspices of the Office of the United Nations High Commissioner for Human Rights in accordance with Commission on Human Rights resolution 1997/47 of 11 April 1997. The goal of the mission was to conduct an on-site forensic assessment of alleged mass graves in the vicinity of Hargeisa, Somalia, and was requested on behalf of the independent expert on Somalia, Ms. Mona Rishmawi. The proposal and initial discussions for this mission were communicated to Dr. Robert Kirschner, PHR, in a letter dated 16 October 1997 from the Chief a.i., Activities and Programmes Branch, UNHCHR. The forensic team provided by PHR were forensic anthropology experts William D. Haglund, PhD, from Seattle, Washington, United States of America (acting as team leader) and Owen B. Beattie, PhD, from Edmonton, Alberta, Canada. On 11 December 1997, a cooperation agreement between the United Nations and PHR was signed. The forensic team departed on 13 December 1997 for an anticipated five-day visit to Hargeisa and its vicinity.

2. In accordance with the cooperation agreement, the forensic experts were to: (a) perform their functions under the authority of the independent expert of the Commission on Human Rights on the situation of human rights in Somalia and; (b) perform the following functions (extracted from Article III, Obligations of the forensic experts):

(i) Undertake all necessary tasks pertaining to determination of the nature of the graves and conducting a preliminary assessment on the conditions of the remains and types of injuries to the bodies who are presently lying in mass graves in the city of Hargeisa;

(ii) Assessment of all logistical considerations regarding the exhumation and examination of all the graves;

(iii) Conduct a one-day workshop for the local authorities and non-governmental organizations in order to provide them with basic information on how to determine whether corpses discovered in a mass grave are the result of a massacre and how to preserve evidence;

(iv) Prepare and submit, upon completion of the project, a detailed report of their findings to the independent expert of the Commission on Human Rights on the situation of human rights in Somalia.

B. Background history of the mission

3. The presence of mass graves, discovered in Hargeisa, Somalia (9.31N, 44.02E), was brought to the attention of Ms. Mona Rishmawi, the independent expert on Somalia, in the summer of 1997. The discovery of these graves resulted from their exposure due to flooding caused by heavy rains in mid-May 1997. They were situated approximately 500 metres north-northwest of the headquarters of the 26th sector of the Somali National Army (hereafter referred to as the Army Headquarters), which had formerly commanded all armed forces stationed in the northern region of Somalia. The account of events following the discovery of the remains, confirmed by the UNDP Office for Somalia, indicated that several hundred bodies were unearthed and then reburied by the local community. A videotape record of some of these events was made by the local authorities. It was reported that the victims unearthed, men, women and children, had been bound by the wrist and roped together in groups of 10 to 15 individuals. These graves were alleged to have resulted from mass killings and subsequent burials conducted by the government troops in 1988 during the regime of President Siad Barré.

4. The forensic team arrived in Hargeisa on the afternoon of 17 December 1997 and was met by a formal delegation representing members of the Technical Committee and the government of the self-declared Republic of Somaliland (hereafter referred to as Somaliland). The delegation was led by the acting Chair of the Technical Committee, Mr. Rasheed Haji Abdillahi Guleed, Minister of Post and Telecommunications. Also present was Matthe Schwerzer, Administrator of the United Nations Service Office (UNSO). The following report presents details of the mission as well as the resultant conclusions and recommendations.

II. ASSESSMENT OF SUSPECTED AND ALLEGED MASS GRAVE SITES

5. Based upon witness statements taken by the Technical Committee and the evidence of the previously identified flood-exposed mass graves, three areas on the south and southwest outskirts of Hargeisa were identified as containing known, suspected and alleged mass graves. These sites are referred to locally as the "Milk Factory" site, the "Malko Durduro Elementary School" site, and the "Badhka" site. According to a "machine driver", who owned a "digging machine", he and an employee were forced to dig grave pits in and around Hargeisa during the late spring and summer of 1988. They used an earth moving machine with a front end digging capacity. The machine driver indicated that the pits for the graves varied in size in accordance with the numbers of individuals to be buried. The driver then dumped bodies, which had been loaded into the machine bucket, into the pits. The graves were then backfilled and earth piled above the level of the surrounding soil, giving each resulting grave hillock a distinctive elongated dome shape. The exact location of many of these graves was pointed out to the Technical Committee by the witness; other hillocks were interpreted by the Technical Committee to be graves, but are currently lacking witness corroboration. These three areas are discussed below. The map coordinates given for each site are those provided on a set of 1:20,000 scale maps (identified as: Hargeysa 4 and 5) compiled and drawn from aerial photographs dating back to February and March 1985 by Photomap International Inc., c/o Photomap (Kenya) Limited, P.O. Box 43805, Nairobi, Kenya. The Technical Committee provided copies of these maps for the use of the

forensic team. In addition to the map coordinates, site locations are given in relation to straight line distance to the Army Headquarters. The map coordinates for the Army Headquarters are N1055750, E394650. It is at an elevation of 1,285 metres above sea level. Compass directions provided in the report relate to true north.

A. Mass graves in the vicinity of the Milk Factory

6. This site is located on the south side of the river along a secondary road approximately 1,700 m east of the Army Headquarters and at an approximate elevation of 1,275 m. The map coordinates are N1055750, E396490. The northern edge of the site begins at the junction of the secondary road, running in a north-west/south-east direction, with a primary road, running east/west. The southern limit of the site is approximately 200 m south-east of the junction. The site is approximately 75 to 100 m wide. The east side of the secondary road along this distance is a traditional cultural cemetery consisting of many formal interments described as containing single remains. The alleged mass graves are directly adjacent to and partly intermingled with these formal graves. Most of the alleged mass graves are found on the west side of the secondary road in an area mainly devoid of vegetation.

7. The formal cultural burials are distinguishable from alleged mass graves as they have elaborate stone pavements and cobbles, or other markers, placed over their surfaces. By contrast, the suspected mass graves are characterized by overlying elongated mounds of soil with an average long axis length of 3.5 to 6 m, a width of 2 to 3 m and a height of approximately 1 m above the surrounding ground surface. Although 59 features consistent with alleged graves were noted at this site, a number were determined by the forensic team to be too small and/or too irregular to be identified in this preliminary assessment as being potential mass graves. The forensic team concluded that a minimum of 40 definite features were consistent with mass graves, and that the less obvious features would still warrant investigation at the appropriate time. No test excavations were undertaken in the vicinity of the Milk Factory.

B. Mass graves in the area of Radhka

8. This site is located on the south side of the river on the western edge of a community of homes, approximately 2,600 m east/south-east of the Army Headquarters, and at an approximate elevation of 1,300 m. The map coordinates are N1054750, E397150. No formal road leads to the site, though vehicle access is possible. The site is approximately 250 m long in a north/south direction and approximately 100 to 125 m wide. The area is mainly devoid of vegetation. This area of alleged mass graves is also directly adjacent to a traditional cultural cemetery.

9. Twenty-nine features were identified, consisting of mounds of soil averaging 3.5 m long, 2.5 m wide and 1 m in height above the surrounding ground surface. Ten of these alleged graves are intermingled with the formal cultural graves at the south end of the site. The remaining 19 mounds are concentrated in the north-western portion of the site and are separate from the cemetery. The location and appearance of these mounds are consistent with witness testimony as being potential mass graves.

10. As this site was in a more remote location than the Milk Factory and therefore less likely to attract many onlookers, it was decided that the assessment excavation would take place here. One alleged grave on the north-east edge of the site, designated as BDK-1, was independently chosen by the forensic team for excavation. This excavation was undertaken on 19 and 20 December 1997 in order to establish the nature of the features, to verify if there were people buried in them and, if so, to determine the number of individuals, their sexes, ages and types of injuries (if any), and to identify and document other associated forensic evidence.

11. The test excavation at BDK-1 - Feature BDK-1 was of a low mound of soil with a long axis measuring 3.5 m and a width measuring 2 m. The long axis was in a north-east/south-west orientation. The height of the mound was about 80 cm above the surrounding ground surface. Some disturbance in the north-east section of the mound appeared to be weather related.

12. The assessment excavations followed established forensic archaeological procedures, including the establishment of a datum, and the examination and recording of surface features and contours, with some necessary modifications (see Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, 1991, United Nations). The tools used were hand shovels, trowels, hand brooms, paint brushes and soft wood probes. Photographs of all stages of the excavation were taken with a Canon F1 35 mm single lens reflex camera, using 100 mm macro, 20 mm, 28 mm, and 50 mm lenses. Film used was Kodak Ektachrome Elite (transparency) and Gold 200 (print), both ISO 200. Soil screening was not done during this assessment excavation, but any future work at this grave must include a complete screen search of the excavated soil. A number of local workers were employed to assist in the digging (numbers ranged from four to eight at various times during the excavation).

13. A 1 m wide and 6 m long trench outline was established and centred along the long axis of the mound. To preserve the cross sectional profiles of the mound, the initial excavation consisted of maintaining a 1 m square balk located in the exact centre of the mound, and excavating 1 m on the west and east sides within the demarcated grid. The final excavation unit measured 3 m by 3 m.

14. Initial digging consisted of removing horizontal layers within the grid until a depth of 50 cm below the surrounding ground level was reached. At this point, no discoveries had been made. Photographs of the vertical soil profiles of the trench and balk were completed. This was followed by the extension of the excavation another metre to the north and south sides of the original trench lines. After the widening and deepening of the excavation unit, human bones were found at a depth of approximately 75 cm below the surrounding ground surface, and almost directly under the central and highest point of the mound. This individual was designated BDK-1-1. Continuing excavation revealed a second individual to the north of BDK-1-1, and at the same depth, designated BDK-1-2. Directly beneath these bodies the soil was scored by a series of seven parallel grooves running in a roughly north/south direction.

15. The light red-brown soil was found to be very dry and loose, and mixed with easily crumbled consolidated lumps of various sizes. The looseness of the soil made it very difficult to pedestal the remains of the individuals. Beneath the bodies the soil was very compact, hard and easily distinguishable in texture from the grave fill. A complete excavation would make it possible to determine the full extent of the original grave pit. The soil characteristics beneath the body were very different, and mark the limits of the original excavation when preparations were being made for the burial of these individuals. The scored, hard soil beneath the bodies is prominently concave along the axis of the bodies and perpendicular to the grooves. The bodies had been placed in the central and lowest part of the original excavation. The forensic team interpreted that the concavity of this feature, along with the seven parallel grooves, was produced by an earth moving machine with a toothed bucket. A pit nearly 80 cm deep in the centre was scooped out with this machine. The bodies were then placed in the bottom of the depression and the hole backfilled, leaving a characteristic mound marking the location.

16. Victims BDK-1-1 and BDK-1-2 were completely exposed during the excavation. After photography, the bones and associated materials found with each individual were temporarily collected for on-site examination and analysis.

17. Individual BDK-1-1 is male and between 17 and 22 years of age at the time of his death. His unclothed body is oriented on its back in a roughly east/west direction, with his head to the east. The head is resting completely on its left side, with the face to the north. His left arm is positioned with the elbow over the lower thorax, and the forearm flexed 90 degrees towards the right. The right arm roughly parallels the placement of the left arm. Both legs are moderately flexed and bent to the right side. The knees are flexed past 90 degrees. The left side of the thorax is in contact with the left abdominal and hip areas of BDK-1-2. No trauma is noted. A length of light pink coloured cotton-like material, tied in a loop with an approximate diameter of 4 cm, is found 8 cm north of the frontal bone. A nearly identical object is found in contact with the distal end of the left tibia.

18. Individual BDK-1-2 is male and between 25 and 35 years of age at the time of his death. The remains are oriented in an east/west direction with the head towards the west. He rests on his back, his left upper arm at his side, tightly flexed at the elbow, with the hand resting on his left shoulder. His right arm is partly abducted, with the forearm tightly flexed and the right hand resting beside the skull. His head is turned on its right side, with the face directed to the north. Both legs are fully extended. He is clad in green-coloured socks and trousers and two pairs of underpants. The outer pair of underpants are boxer-type, of light coloured background with a dark plaid pattern. The innermost underpants are brief-style, maroon in colour with horizontal light-coloured stripes. The upper garments consist of a light-green-coloured wind breaker, with a full zipper up the front, unzipped, and light-coloured, zippered pocket slashes at the sleeves. Underneath this is a double layered, knit, v-necked, blue long-sleeved sweater, with a light coloured knit lining. Beneath this the victim is clad in an olive-green long-sleeved shirt with button down breast pockets. In the

right breast pocket is a "Bic" brand ballpoint pen. The innermost layer is a sleeveless, maroon undershirt, with light coloured piping at the edges of the zippered pockets of the sleeves and around the neck. Trauma to the cranium consists of radiating fractures of the temporal, parietal and frontal bones emanating from the external auditory meati bilaterally, with an associated basal skull fracture.

19. Upon conclusion of the examination, and with the agreement and assistance of the Technical Committee, the human remains and clothing are individually wrapped in plastic tarpaulins and reburied on the floor of the grave, pending further, more extensive analysis.

Summary

20. The independently chosen feature, BDK-1, is an isolated, primary, undisturbed grave containing two individuals. Impressions on the floor of the grave are consistent with the grave having been dug by machine as stated by a witness to the Technical Committee. The interpretation of the observed cranial trauma found in BDK-1-2 would be premature at this time, though the injuries are significant and probably lethal. No evidence is removed from the site.

21. The context of the discoveries leads the experts to conclude that many of the other features, pointed out as being graves by members of the Technical Committee, are likely to contain human remains.

C. Mass graves in the vicinity of the Malko Durduro Elementary School (MKD)

22. The Malko Durduro Elementary School vicinity, adjacent to the southern bank of the seasonally dry river bed which bisects Hargeisa into north and south sections, minimally extends from a point 15 m north-west of the school building (the building is 450 m north north-west of the Army Headquarters) across a primary road and eastward along the south bank of the river for a distance of approximately 175 m, ending at the site of the discovery of mass graves in May and June 1997 (the map coordinates for these graves are N1056260, E394620). The school building has an elevation of 1,275 m. Between these easterly graves and the school are graves partially excavated by locals and marked by stones and extensive cactus growth (the map coordinates for these graves are N1056250, E394600). A minimum of 15 to 20 graves were noted in this area.

23. In surveying beyond the immediate vicinity of the school on 19 December 1997, the forensic team was shown a minimum of eight other alleged graves which had been found in the region. Approximately 500 m to the west of the school a grave consisting of an interment, with human bones and clothing eroding from the surface of a shallow mound, was observed on the edge of a farmer's field (20 m west of this grave, a partial and scattered human skeleton was found on the surface on the steep, heavily vegetated bank leading upward to a road to the south). A minimum of four additional graves were found approximately 200 m to the south-west of the farmer's fields, in an area known as the "Check Point". Returning eastward, additional graves were observed approximately 25 m outside the south-west corner of the former Army

Headquarters compound wall. A number of these graves were large and had clothing and human bones protruding from them. Surface scattered human bones were also seen associated with these mounds.

Test excavation at MKD-1

24. On the day prior to the arrival of the forensic experts, boys from Malko Durduro Elementary School had been digging in a mound approximately 25 m to the north-west of the school building. This mound is located on the school grounds immediately adjacent to the site of the formal reburial of the skeletons recovered by the community in May and June 1997. The map coordinates for the mound are N1056200, E394500, and it is at an elevation of approximately 1,275 m. The boys superficially exposed bones and a rope ligature in the northern portion of the mound. Upon their discovery, the boys ceased their digging and covered over the bones and ligature with soil, marking the site with a tin can and stick. These boys were present during the forensic team's incidental visit to the site on 19 December 1997, and they reported their findings to members of the Technical Committee at that time. In re-exposing and examining the bones and ligature, it was decided by the forensic team that further investigation of this feature was warranted for two reasons: first, the disturbance illustrated the vulnerability of the site and the real potential of valuable forensic evidence being lost; and second, the discovery of a ligature was important forensic evidence providing critical insight into the nature of the burial.

25. On 20 and 21 December 1997, a test excavation was conducted at this feature, which was designated MKD-1. A number of local workers were employed to assist in the digging (numbers ranged from four to eight at various times during the excavation). Their activities were closely supervised by the forensic experts. The excavation and recording methods applied to BDK-1 were followed for MKD-1.

26. The feature was an elongated, irregular, mounded surface 8 m long, 2.5 to 3 m wide and 70 cm high. The long axis was oriented in a north south direction. The remains discovered by the schoolboys were located at the northern limit of this feature. Before the excavation was started, the limits of the disturbance at the northern end were determined. Careful troweling and sweeping of the surface revealed the looser, disturbed soil, and it was possible to identify clearly the complete disturbed area. This area consisted of a shallow depression on the east side of the mound, measuring 1.5 m long by 0.75 m wide and following the long axis of the feature. The undisturbed portions of the feature were easily determined as the soil was very firm and compacted in comparison with the disturbed section.

Victims

27. Four male individuals, designated MKD-1-1, MKD-1-2, MKD-1-3 and MKD-1-4, are exposed in relief. Three of the individuals (MKD-1-1, MKD-1-2, and MKD-1-3) are tightly grouped and bound to each other by a ligature, consisting of a single continuous length of 4 mm wide rope (organic fiber, double strand, Z-spun). Each individual has knotted loops of this rope binding their wrists together behind their backs, with the rope connecting them to each other in a line in the sequence MKD-1-1 to MKD-1-3 and then to MKD-1-2. The rope length

is about 50 cm from MKD-1-1 to MKD-1-3, and 30 cm from MKD-1-3 to MKD-1-2. The overall length of the rope visible in the excavation is 140 cm.

28. Individual MKD-1-1 rests on his back in a roughly north/south direction, with the head to the north. His body is extended, with his hands tied behind his back. His head is resting on the occipital bone and the mandible has fallen down, exposing both dentitions. Bones of both hands, the radius and ulna of the left arm, a number of ribs, and the right innominate have been disturbed by the exploratory digging of the schoolboys. This individual is clad in brown trousers and jacket and a long-sleeved shirt. He wears no foot apparel. The ligature is tied to his right wrist. The relationship of the left forearm to the ligature cannot be determined due to the previous disturbance of this part of the grave. The ligature runs from this individual to MKD-1-3.

29. Individual MKD-1-2, located 60 cm west of MKD-1-1, rests on his left side in a roughly north/south direction, with the head to the south. His left leg is extended, and his right leg partially flexed at the knee. Both arms extend perpendicularly behind him, with the ligature connecting him to individual MKD-1-3. His head is resting on its left side, slightly face down. He is clad in military-type, camouflage trousers and shirt. The ligature is tied to his right wrist. The left wrist is not exposed during the excavation, and its relation to the ligature is not yet determined.

30. Individual MKD-1-3 is unclothed, resting on his stomach, with the upper torso slightly twisted to his left and oriented roughly in a north/south direction, with the head to the north. The arms extend perpendicularly behind his back. His hips and knees are maximally flexed under his abdomen. A large tree root (8 cm in diameter) runs east/west across the ischial bones, indicating the edge of this part of the pit during the original burial. The ligature is tied to his right wrist, that is, the distal ends of the radius and ulna are within the loop. The ligature extends in one direction to MKD-1-3, and the other direction to MKD-1-1. The left wrist is positioned near the right wrist, but the radius and ulna are not positioned within the loop.

31. Only the skull, neck, left shoulder, and superior and posterior thorax of individual MKD-1-4 are exposed during the excavation. This individual rests on his stomach, and is oriented roughly in a north/south direction, with the head to the north. A light coloured shirt has been partially pulled down off the shoulder. The left humerus angles slightly across the back of the individual. The head rests on the right cheek and is slightly turned to the left. The left ascending ramus of the mandible is fractured in at least two locations, including the junction of the ramus to the mandibular body. No bindings are identified. A loose bundle of torn plastic and fabric about 20 cm in diameter is found directly adjacent to the vertex of the skull.

32. Following delineation of the ligature, no further exposure or analysis of the remains were undertaken. With the agreement and assistance of the Technical Committee, the remains were covered with a plastic tarpaulin to protect them and to mark the extent of the excavation. They were then re-covered with soil, and the surface marked with stones and surrounded by a thorn fence.

Summary

33. The feature MKD-1 is a primary, partially disturbed grave containing the commingled remains of three individuals. The presence of a fourth individual suggests extension of the grave to the south. The four males are partially exposed in the test excavation. Three of these persons have their hands tied behind their backs, and are bound to each other. Individual MKD-1-4 has trauma to the left ascending ramus of the mandible consisting of fractures in at least four locations, including the junction of the ramus to the mandibular body. No evidence is removed from the site.

III. WORKSHOP ACTIVITIES

34. The forensic team, while in Hargeisa, provided didactic information to the forensic team to the Technical Committee and local medical staff in two formats: (a) discussion and demonstration of the theory and techniques of grave excavation at the sites of the assessment excavations, and (b) an introduction to human rights investigations of mass graves and basic forensic anthropology, conducted in a classroom and employing a slide-discussion format.

A. Theory and techniques of grave excavation

35. Working within the time available, the basic tenets of forensic excavation of buried human remains to the Technical Committee and local medical staff during the assessment excavations at BDF-1 and MKD-1, including:

(a) Attention to concerns for the security of the site and scene under investigation, of the grave perimeter, and the importance of maintaining 24-hour security throughout the investigation (that is, providing security control of the site by limiting access to authorized investigation staff only, to maintain the integrity of the site and to protect and preserve the evidence);

(b) An introduction to basic survey and mapping methods, and a discussion of the requirements for site and scene documentation;

(c) Explaining the significance of excavation techniques such as test trenching and the interpretation of site stratigraphy;

(d) A discussion of the necessary forensic documentation of excavation and subsequent analysis;

(e) The interpretation of the site and scene evidence in order to determine the location of human remains, the exact circumstances of the discovered burial, and the location of grave boundaries;

(f) The method of examining human remains at the site, including preliminary determination of the sex and age at time of death of each victim, other characteristics potentially valuable in determining identity, and the identification of possible trauma.

36. During the assessment excavations, some of the Technical Committee, and both local physicians associated with the Technical Committee, assisted in all stages of grave excavation and the examination of the victims' remains.

B. Introduction to human rights investigation of mass graves and basic forensic anthropology

37. Upon completion of the assessment excavations, the forensic team made a 1.5 hour slide-discussion presentation to the Technical Committee and local physicians which reviewed basic concepts of forensic anthropology and the exhumation of mass graves. This part of the workshop was held at the nursing school of the Hargeisa Hospital on 21 December 1997 and included:

(a) Basic questions raised during forensic anthropological investigation of graves, including the determination of sex, age at time of death, individualizing characteristics, evaluation of elapsed time since death, and detection of trauma;

(b) The demonstration of recent and ongoing forensic investigations in Latin America, the former Yugoslavia and Rwanda;

(c) Discussion of the realities and challenges of personal identification in instances of mass death associated with human rights violations: what can be achieved, what may not be achievable;

(d) Discussion and conclusions relating the findings of the assessment excavation to future potential investigations in Somaliland.

IV. SUMMARY FINDINGS, RECOMMENDATIONS AND CONCLUSION

A. Results of assessments, test excavations and examinations

38. A total of 92 to 116 alleged mass grave features are observed in three areas on the outskirts of Hargeisa, Somalia. Forty features are identified at the Milk Factory site, with an additional 19 less distinct features warranting future investigation. Twenty-nine features are identified at the Badhka site. Witness accounts describe these features at both sites as having been dug by machine. They are marked by hillocks of earth mounded over the suspected burial. The third area examined is in the close vicinity of the Malko Durduro School, where 15 to 20 suspected mass grave features are observed, along with a minimum of eight additional features in a more extended area to the west, south-west, and south-east of the school. Surface characteristics from these observed features are similar to those of the suspected mass grave features at the Badhka site and the Milk Factory site.

39. Two features were independently selected by the forensic experts for testing: one at the Badhka site (BDK-1) and the other adjacent to the Malko Durduro School (MKD-1). Both contain human remains. All human remains examined are fully skeletonized and, along with clothing and ligatures observed, are in a good state of preservation.

(a) The feature designated BDK-1 is a grave containing two male individuals, of 17 to 22 and 25 to 35 years of age respectively. No trauma is

observed for the younger victim, while the older demonstrates blunt trauma to the cranium. Pink cloth ties, possibly ligatures, are found in association with the lower limbs of each.

(b) The feature designated MKD-1 is a grave, and is excavated in order to determine the circumstances of burial. Four adult male individuals are partially exposed. Three of these victims have their hands bound behind their backs and are tied to each other. One individual has a fractured mandible.

(c) The nature of the graves, evidence of perimortem injury, and the occurrence of bodies bound together by ligature, in combination with the haphazard placement of the bodies in the graves (especially at MKD-1) leads the forensic team to conclude that the deaths of these individuals are suspicious, and constitute a violation of human rights. In addition, the forensic team has verified that features described by witnesses as mass graves are indeed mass graves.

(d) The forensic team emphasizes that the examinations of the sites and victims described in this report were conducted within the guidelines of an assessment mission, and therefore should be considered "in progress" and incomplete. Any future fully supported investigation must begin with the completion of evidence collection at graves BDK-1 and MKD-1.

B. Recommendations

Logistical considerations regarding the exhumation and examination of mass graves

40. Given the number of graves in the vicinity of Hargeisa, it is suggested that the location of all known mass graves be mapped. A limited and representative sample of graves should be fully exhumed and the victims examined. This would best be accomplished by an international team of forensic experts. For those graves not the subject of an in-depth forensic investigation, it is suggested they be excavated by the Somaliland authorities, with the assistance of local physicians, especially trained in forensic analysis of skeletal remains. For graves investigated in this manner, it is advised that forensic monitor(s) observe excavations and provide advisory support in the analysis of human remains. In this way, an independent summary of basic demographics of victims, as well as their cause of death and circumstance of burial could be assembled, thus maximizing the evidentiary value of all graves exhumed, both by international forensic experts and by the Somaliland authorities. Prior to, and concurrent with the exhumations of mass graves, the Technical Committee can be compiling data on missing persons and their families that can potentially provide information leading to identification of victims (e.g. missing person's health, injuries, dental characteristics, and other personally unique physical attributes; DNA).

41. Logistical concerns are as follows:

(a) Funding;

(b) Purchase, transport and storage of materials, equipment and supplies necessary to conduct exhumations and postmortem examinations; appropriate teaching materials and references needed for training;

(c) Selection and scheduling of forensic experts, arrangements for international travel to Hargeisa, transportation, food and lodging.

42. Advance preparations in Somaliland would include the location and securing of facilities for the storage and examination of remains, and the selection and training of a forensic analysis team composed of medical doctors, as well as a local excavation team. Administrative issues concerned with the certification of death and final disposition of remains need to be resolved prior to the start of excavations.

43. It is advisable that any forensic investigations be undertaken in the dry season. A preparation lead time of approximately five to six months to develop and implement the logistics of the mission will be required.

44. Although they have not expanded their enquiry much beyond the area of Hargeisa, the members of the Technical Committee indicate that there exist alleged mass graves in or about the cities of Lasa Anod, Erifvo, Burao, Berbera, Bireme and Zeila. The number and sizes of these graves are not known at this time. Further assessment and consideration would be necessary to take them into account for the forensic investigation.

C. Assistance to the Somaliland Administration

45. It is suggested that training and assistance be provided to the Somaliland Administration in regard to setting up its own forensic team for the purposes of performing controlled excavations of mass graves and the subsequent osteological analysis of recovered human remains. Further international assistance would be helpful in attempts at confirming personal identification of victims.

Conclusions

46. The authors, having observed a large number of suspected and known mass grave sites in the vicinity of Hargeisa, Somalia, and having conducted an assessment examination of two graves containing a minimum of six individuals exhibiting evidence of perimortem injury, binding, and haphazard burial, conclude that human rights violations have been committed against these individuals. Therefore, the authors recommend that the United Nations, in consultation with the Technical Committee:

(a) Provide assistance to the Technical Committee relating to the procedures for the collection of witness testimony;

(b) Provide assistance to the Technical Committee relating to compiling a comprehensive grave registry, including detailed survey, in the vicinity of Hargeisa, as well as in other regions and towns with suspected mass graves;

(c) Establish a means of providing financial support for the conduct of thorough investigations of alleged and known mass grave sites and human rights violations linked to the period 1988 to the present; and

(d) In carrying out recommendation (c), (i) authorize and assemble an international team of forensic specialists, working with local professionals for the purpose of conducting investigations of selected mass graves and (ii) encourage and support additional forensic investigations to be conducted by local professionals trained in forensic methods, assisted by international specialists.

V. ACKNOWLEDGMENTS

47. The authors express gratitude to the following: PHR, Boston; United Nations Office of the High Commissioner for Human Rights, Geneva; United Nations Development Programme (UNDP), Nairobi; and Marthe Schwerzer, Administrator of the United Nations Service Office (UNSO). The cooperation and support of the Somaliland Administration and Technical Committee were indispensable.

(Note: the spellings of some place names and people were provided to the authors by members of the Technical Committee, or are phonetically represented.)

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